

TITLE 5. COMMUNITY AFFAIRS
CHAPTER 25. REGULATIONS GOVERNING NEW HOME WARRANTIES AND BUILDERS' REGISTRATION

N.J.A.C. 5:25

§ 5:25-1.1 Title

This chapter shall be known as and may be cited as "Regulations Governing New Home Warranties and Builders' Registration".

§ 5:25-1.2 Scope

This chapter shall: prescribe the form and coverage of the minimum warranty established by the Act; govern procedures for the implementation and processing of claims pursuant to the warranty; establish requirements for registration as a builder, and procedures governing the denial, revocation and suspension of builders registration; and, establish the requirements of private alternate New Home Warranty Security Plans and of the State New Home Warranty Security Plan.

§ 5:25-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Act" means the New Home Warranty and Builders' Registration Act (P.L. 1977, c.467), and regulations promulgated hereunder.

"Appliances, fixtures, and equipment" shall mean and include, but not be limited to: furnaces, boilers, heat pumps, humidifiers, air purifiers, air handling equipment, ventilating fans, air conditioning equipment, water heater, pumps, stoves, ranges, ovens, refrigerators, garbage disposals, food waste disposers, compactors, dishwashers, automatic garage door openers, washers, and dryers, plumbing fixtures and trim, faucets, fittings, motors, water treating equipment, ejectors, thermostats and controls, including any fitting attachments; electric receptacles, switches, lighting fixtures, and circuit breakers;

"Builder designee" means the partner, officer, or director designated as such in the builder's application for registration and is the individual responsible for on-site building activity.

"Certificate of occupancy" means the certificate required to be issued pursuant to the State Uniform Construction Code Act, (N.J.S.A. 52:27D-119 et seq.).

"Certificate of Participation" means that certificate which is issued by the Commissioner to the owner of each new home constructed by a builder who participates in the State Plan and which signifies that the home was constructed by a participating builder, and that premiums due have been paid.

"Commissioner" means the Commissioner of the Department of Community Affairs.

"Common elements" shall mean those elements listed in the master deed on file for each such development or unit as required under law for common ownership.

"Consequential damages" means damage to the home itself resulting directly or proximately from a defect covered by the warranty.

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"Construction permit" means that permit required pursuant to the State Uniform Construction Code Act (*N.J.S.A. 52:27D-119 et seq.*) before the construction of any new home is permitted to begin.

"Department" means the Department of Community Affairs.

"Director" means the Director of the Division of Codes and Standards.

"Division" means the Division of Codes and Standards in the Department of Community Affairs.

"General contractor" means a builder who is responsible for general construction, plumbing, heating, and air-conditioning, and electrical work for a single new home constructed for an owner on the owner's land.

"Major structural defect" means any actual damage to the load-bearing portion of the home, including consequential damages, damage due to subsidence, expansion or lateral movement of the soil (excluding movement caused by flood or earthquake) that affects its load-bearing function and that vitally affects or is imminently likely to vitally affect use of the home for residential purposes. "Major structural defect" shall have the same meaning as "major construction defect," as used in the Act.

"Mechanical and electrical systems" shall mean and include the following:

1. Plumbing system: Gas supply lines and fittings, and water supply, waste and vent pipes and their fittings; septic tanks and their drains; water, gas, and sewer service piping, and their extensions to the property line which tie-in to a public utility connection or on-site well and/or sewage disposal system.

2. Electrical system: All wiring, electrical boxes, and connections up to the public utility meter connection, excluding appliances, fixtures and equipment.

3. Heating, Ventilating, Cooling and Mechanical systems: All ductwork, steam, water and refrigerant lines, registers, convectors, radiation elements and dampers.

"New home" means any dwelling unit not previously occupied, excluding dwelling units constructed solely for lease, and units governed by the Federal Mobile Home Construction and Safety Standards Act, *42 USC 5401 et seq.*

"New home builder" means any individual, corporation, partnership or other business organization engaged in the construction of new homes. Whenever used herein the term "builder" shall mean "new home builder."

"Owner" means any person for whom the new home is built, or to whom the new home is sold, for occupation by that person or the family of that person as a home, and also means and includes his or her successors in title to the home, or mortgagee in possession. "Owner" does not mean or include any development company, association or subsidiary company of the builder or any person or organization to whom the home may be sold or otherwise conveyed by the builder for subsequent resale, letting or other purpose.

"Person" means any individual, corporation, association, or other entity, as defined in *N.J.S.A. 1:1-2*.

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"Release" means an executed acknowledgement of satisfaction of the claim of defect required to be given to a builder by an owner after a claim of defect is satisfied. A release shall not prejudice the right of the owner to further relief from the builder pursuant to N.J.A.C. 5:25-5.5, Claims procedure.

"State New Home Warranty Security Plan" or "State Plan" means the combination of dispute settlement procedure, New Home Warranty Security Fund, and any other elements of the program operated by the Division of Housing and Development intended to give effect to the Act and these regulations.

"Stockholder" means any person who owns any share or share in a builder except that as used herein the term stockholder shall not include persons holding publicly-traded shares on any national or regional stock exchange.

"Subsidiary" means any corporation, partnership or other business organization which is controlled in any manner by any other corporation, partnership or business organization. Control is presumed whenever such organizations share any common officers, directors, principals, or stockholders.

"Warrantor" means the builder who constructed or transferred title to the owner.

"Warranty" means the warranty prescribed by the Act and these regulations.

"Warranty administrator" means that person responsible for administering any portion or all of the claims resolution and defect correction process of a private plan where that person is a legal entity different from the warranty guarantor.

"Warranty date" means the date of the first occupation by the owner or settlement date, whichever is sooner.

"Warranty guarantor" means that person responsible for securing the warranty, required to be offered pursuant to these regulations, on behalf of a private plan. The term shall mean and include warranty administrator where a separate administrator is not established.

§ 5:25-1.4 Administration and enforcement

(a) The Division of Codes and Standards in the Department of Community Affairs shall administer and enforce this chapter. All the powers, duties and responsibilities vested in the Commissioner by the New Home Warranty and Builders' Registration Act are hereby delegated to and vested in the Director of the Division of Codes and Standards except the power to adopt, amend or repeal rules and the power to make final determinations resulting from any of the hearings required or permitted to be held pursuant to the Act, this chapter or the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) Within the Division of Codes and Standards, responsibility for the administration and enforcement of these rules shall be vested in the Bureau of Homeowner Protection. All powers and responsibilities delegated to the Director, Division of Codes and Standards by this chapter shall be executed, subject to supervision by the Director and by the Assistant Director for Construction

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Code Enforcement, by the Chief, Bureau of Homeowner Protection, who acts as State Plan administrator.

§ 5:25-1.5 Effective date

(a) The provisions of these regulations prescribing the new home warranty and the procedures for the implementation and processing of claims against a warranty shall take effect on July 1, 1979. No builder shall on or after that date, transfer title of possession for occupancy of any new home to an owner, unless the builder shall have registered in accordance with this chapter.

(b) No builder who has been issued a certificate of registration pursuant to these regulations shall, after August 1, 1979 be required to be licensed or registered by any municipality of this State; nor shall any builder be required to offer any warranty by any municipality; nor shall any builder be required to post any bond or any other form of security relating to the construction of a new home, exclusive of those required by water, sewer, utility, or land use requirements.

§ 5:25-1.6 Validity

If any provisions of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect and to this end the provisions of this chapter are severable.

§ 5:25-2.1 Registration required

(a) No individual, partnership, corporation or other business entity shall engage in the business of constructing new homes unless registered with the Department in accordance with this subchapter.

(b) No corporation, partnership, or other business entity shall be issued a registration in accordance with this subchapter nor shall they engage in the business of construction of new homes unless a stockholder, director, officer, partner or employee thereof, as the case may be, shall be listed as a builder designee in accordance with this subchapter.

(c) For the purpose of these regulations, the term "engaging in the business of construction of new homes" shall mean and include constructing any new home for sale, acting as prime contractor to construct any new home on behalf of oneself or another person or advertising or holding oneself out as constructing or being available to construct a new home or homes.

1. The term shall also mean and include the sale or transfer of title to a parcel of land to any person and the subsequent participation in the construction of a new home or any part of a new home by the seller or transferor.

2. The term shall also include a person who contracts with a general contractor or with subcontractors for the construction of a new home for the purpose of sale to an owner.

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(d) Nothing herein shall be interpreted as requiring that a person who constructs a new home for his own personal use and occupancy or who contracts with a licensed architect, professional engineer or attorney to provide customary professional services in connection with said new home, be registered as a builder; nor shall a person acting as a licensed architect, professional engineer or attorney for said owner to provide customary professional services in connection with said new home, be registered as a builder. If such new homes are subsequently sold to purchaser who is not the original builder/owner, notification that the home carries no warranty shall be made at the time of title transfer and/or closing. No person shall be permitted to construct a new home for his own use and occupancy more often than once each five years without being registered as a builder, and complying with these regulations.

(e) A corporation, partnership or other business organization may be denied a certificate of registration as a builder if any stockholder, director, officer, partner, or any other person having an economic interest in the organization shall have violated any of the provisions of *N.J.A.C. 5:25-2.5*. The provisions of this subsection shall extend to any business organization having a parent or subsidiary relationship to any such business organization.

§ 5:25-2.2 Registration; new home builder

(a) Rules concerning application are as follows:

1. Every application for registration as a new home builder shall be made on the form prescribed by the Commissioner and shall be accompanied by a non-returnable registration fee of \$ 200.00;

2. Each application for registration as a new home builder shall include full name and address of the business. In the case of a corporation the name entered on the application shall be that registered with the Secretary of State. In all cases the address entered on the application shall be the street number, street name, and municipality at which the primary office of the applicant's business organization is located. In no case shall the address be a post office box or the address of an agent. It shall, in all cases, be the address at which the proprietor, or a listed builder designee who is a partner, officer, director or stockholder of the organization can usually be found. The address shall be that of a business office unless there is none in which case it may be a residence address. The application shall appoint an agent for the service of process and shall provide his address. The agent may be any person who is a resident of this State. The application shall also include the builder's business and home telephone number his Federal Employer Identification number and the names, and addresses and home phone numbers of all persons having a minimum of ten percent interest in the new home builder. In addition, the application shall include historical information concerning the experience of the builder in the State of New Jersey including the number of years in the new home construction business, and the municipalities in which the business has been practiced during the three years immediately previous to the date of application. The application shall also include any criminal convictions against any person having an interest in the new home builder and the disposition thereof;

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3. Each applicant for a certificate of registration as a builder shall disclose in the application any subsidiary or parent relationship with any other new home building organization and shall further disclose all interests of any officer, partner, director, or stockholder of the builder in any other new home building organization.

(b) At least 30 days prior to the expiration date of a builder's registration, the Division shall mail a renewal application form to the builder at the builder's then current registered address by ordinary mail.

§ 5:25-2.3 Certificate of registration

Upon receipt of a completed application, a certificate of registration will be issued as a registered builder unless denied in accordance with *N.J.A.C. 5:25-2.5*. The certificate of registration shall remain valid, unless suspended or revoked in accordance with *N.J.A.C. 5:25-2.5*, until the expiration date indicated thereon except in the case of a builder whose relationship with the partner, director, officer, or stockholder who shall have been the registered designee is ended. In such a case the certificate of registration shall expire and become invalid unless another designee is substituted. The certificate of registration shall also become invalid if a builder shall fail to continue or let lapse his participation in either the State Plan or a private plan.

§ 5:25-2.4 Registration renewal

A certificate of registration may be renewed for additional two year periods. Applications for renewal shall be made upon the forms provided by the Commissioner and shall be accompanied by a fee of \$ 200.00 and shall be subject to the same conditions as an original application.

§ 5:25-2.5 Denial, suspension or revocation of registration

(a) A certificate of registration may be denied or revoked if the registrant or applicant or an officer, partner, director or stockholder of the registrant or applicant has at any time:

1. Willfully made a misstatement of material fact in his application for registration or renewal;
 2. Willfully committed fraud in the practice of his occupation;
 3. Practiced his occupation in a grossly negligent manner;
 4. Willfully violated the New Jersey State Uniform Construction Code to any substantial degree;
- or
5. Habitually or egregiously engaged in any act or omission set forth in (b)1 through 7 below.

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(b) A certificate of registration may be denied or suspended, pending compliance with the Act, with this chapter and with the orders of the Commissioner, if the registrant or applicant, or an officer, partner, director, or stockholder of the registrant or applicant, has at any time:

1. Failed to continue his participation in either the State Plan or a private plan;
2. Failed or enroll or warrant any new home with either the State Plan or an approved private plan;
3. Failed to correct or settle any claim arising out of any defect after his responsibility has been established through the dispute settlement procedure of the State Plan or of a private plan, as the case may be, unless such determination is appealed and a stay of the order to correct the defect is issued by the Commissioner or by a court having jurisdiction;
4. Failed to file an amended application for or to a certificate of registration within 30 days of any material change in the information provided in the most recent application or amendment thereto;
5. Had as an officer, partner, director or stockholder any person who was serving as an officer, partner, director or stockholder of a builder that is not registered or the certificate of registration of which has been revoked or is currently suspended; provided that this paragraph shall not apply to any person who was not affiliated with such builder at the time that the incident or practice that led to revocation or suspension occurred;
6. Incurred, or been responsible for incurring, an award against the New Home Warranty Security Fund for which the fund has not been fully compensated; or
7. Failed to participate in the dispute settlement process, in which case any suspension shall continue in effect pending resolution of the dispute and full compensation for any payments made, or expenses incurred, by the Fund.

(c) A certificate of registration may be denied or revoked, or suspended, depending on the nature and severity of the violation, if the applicant or registrant, or an officer, partner, director or stockholder of the applicant or registrant, has at any time, violated any provision of the Act or of this chapter, or any order of the Commissioner, with regard to any matter not referred to in either (a) or (b) above.

(d) Whenever the Department shall find cause to deny an application for a certificate of registration, or to suspend or revoke same, it shall notify the registrant or applicant of the reasons therefor, in writing, and provide opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 when an appeal is filed within 15 days from the date of receipt of the notice. The Commissioner shall issue the final decision in accordance with the applicable provisions of the Administrative Procedure Act and the Uniform Administrative Procedure Rules.

(e) Any new home purchaser under contract with a builder whose registration has been suspended or revoked may at the purchasers option, and under the supervision of the Bureau of Homeowner Protection, require the builder to complete the work. The warranty plan under which the home is covered or was required to be covered at the time of closing shall cover said home for the length of the warranty.

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§ 5:25-2.6 Failure to register; penalty

(a) Any builder who fails to register as herein required, who fails to file an amended application as specified in *N.J.A.C. 5:25-2.5(b)4*, or who fails to maintain a current builder registration as required by *N.J.A.C. 5:25-2.1(a)*, shall be subject to a penalty not to exceed \$ 2,000 for each offense, to be levied by the Division and collected in accordance with the Penalty Enforcement Law, *N.J.S.A. 2A:58-1 et seq.*

(b) Each instance in which a builder sells a new home without having been registered, or without then having a registration currently in effect, shall be considered a separate offense.

§ 5:25-2.7 Enrollment in a warranty plan

Each builder or building business entity shall, at the time of registration, indicate on the registration form the warranty plan in which that entity is enrolled or chooses to be enrolled. No builder or building business entity shall be issued a certificate of registration unless they have enrolled or have applied for enrollment in either the State Warranty Plan or a private warranty plan.

§ 5:25-2.8 Restoration of registration

(a) No certificate of registration which has been suspended or revoked shall be restored to any person previously registered as a builder unless the Director finds that the reason for the suspension or revocation no longer applies and is unlikely to recur and that such builder has fully compensated or, as a condition of such restoration, will fully compensate, the State Plan or any private plan or any other person for any loss incurred as a result of such builder's failure to comply with the Act.

(b) No certificate of registration which has been suspended, revoked or allowed to lapse shall be restored unless and until all fees, premiums, surcharges and penalties have been paid in full.

(c) In any case in which payment has been made by the State Plan or any private plan as a result of failure by a builder to comply with the Act, full compensation, within the meaning of (a) above, shall include, without limitation, interest in the maximum amount allowed by law on any payments made by the State Plan or private plan. For purposes of determining the legal interest rate, such payments shall be deemed to be unsecured loans made by the plan pursuant to a written agreement.

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§ 5:25-3.1 Warranty applicability

(a) The warranty specified in this section shall be provided by any and all new home builders for all new homes for which title is first transferred from builder to owner, or for which possession or occupancy is first given by builder to owner, on or after July 1, 1979.

(b) A new home built for an owner shall be considered given for occupancy if the builder shall obtain and give over to the owner a certificate of occupancy issued by a local enforcing agency pursuant to the New Jersey Uniform Construction Code. A new home sold to an owner shall be considered given for occupancy when the owner is authorized to occupy pursuant to any agreement between the builder and the owner.

(c) The following rules concern applicability to condominiums and cooperatives:

1. In addition to the individual dwelling units, the common elements serving condominiums or cooperatives are covered by this warranty, subject to the exclusions as defined under *N.J.A.C. 5:25-3.4*. The warranty date on common elements shall be the date on which that common element is first put to use. In the event one unit in a single condominium or cooperative structure is sold all remaining units in that structure shall be warranted whether sold or used for rental purposes.

2. Where the warranty date on common elements has expired, a unit owner who has taken first occupancy after that period may file a notice of defect on a common element directly with the builder and when it is established that such defect could not have been determined prior to occupying the unit, the defect shall be made a part of the unit owner's claim.

(d) Any condominium or cooperative building containing three or more dwelling units for which more than 10 percent of the unit deeds or leases have been transferred or signed, as the case may be, or where more than 10 percent of the units have been given for occupancy prior to July 1, 1979, shall not be subject to this Act. In the case of a project consisting of more than one building, individual buildings within such project shall not be subject to this Act by the same criteria.

(e) The warranty specified in this section shall be applicable to new owner-occupied two-family homes in the same manner and to the same extent as to one-family homes.

(f) In any case of mixed residential and nonresidential use, the warranty specified in this section shall be applicable only to that portion of a new home that is used exclusively for residential purposes, unless it can be shown that a defect in the nonresidential portion is or will be the proximate cause of a defect in the residential portion of the new home.

(g) Where an owner has contracted with someone other than the builder for either the mechanical, electrical, foundation or framing, other than piling foundation, the builder shall not be required to provide a warranty. Except where an owner has contracted with some person other than the builder for construction of the foundation and/or framing a warranty may be issued, at the builder's option, that shall contain exclusions for work done by anyone other than the builder, the builder's employees, agents or subcontractors.

(h) The warranty administrator or State Plan administrator shall require, prior to the issuance of a warranty for any model home, for any new home that has been completed but vacant for a period

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of at least 12 months, or for any new home for which it has been made a condition of enrollment under either an approved private plan or the State Plan, the inspection of the new home by the warranty plan prior to occupancy and the repair, replacement or correction, by the builder, of any materials or workmanship exhibiting defects and replacement of any appliances, fixtures or equipment not covered by a manufacturer's warranty for at least one year from the warranty date.

1. In the event that a builder disputes a determination by the warranty administrator or State Plan administrator that a defect exists, the builder shall have the option of submitting the certification of a licensed professional engineer that structural and/or mechanical components of the home meet industry standards and are adequate for the term of the warranty coverage.

2. In the event that there is not sufficient time to correct all defects prior of the transfer of the new home to an owner, the builder shall, with the agreement of the owner, and in lieu of repair, replacement or correction of defects, or replacement of appliances, fixtures or equipment, as provided in (h) above, have the option of posting, with an attorney at law or banking institution licensed in the State of New Jersey, an escrow in an amount not to exceed five percent of the selling price or limit of liability, the escrow to be released only upon a determination by the warranty administrator or State Plan administrator that the required work or replacement has been satisfactorily done, or to be forfeited to the approved private warranty plan or State Plan in the event that the work is not done in a satisfactory manner, or the required replacement is not made, within such time as the agreement establishing the escrow may allow.

(i) Builders may negotiate monetary settlements, as noted in *N.J.A.C. 5:25-3.3(b)*, in the form of price concessions, which settlements shall survive closing and shall be incorporated into the terms of the warranty coverage available on the home.

1. Any defect or deficiency for which an owner accepts a monetary settlement shall be excluded from warranty coverage.

2. It shall be the responsibility of any builder entering into a monetary settlement in lieu of correcting a defect or deficiency to provide the approved private plan or the State Plan with a copy of an agreement, signed by both the builder and the owner, specifying the amount of the price concession or other monetary settlement and the defects or deficiencies for which the settlement is being made. This document shall be provided at or before the time that the new home is enrolled in the warranty plan.

§ 5:25-3.2 Warranty coverage

(a) The warranty made applicable by these regulations shall be as follows:

1. One Year Warranty: For a period of one year from the warranty date each new home shall be free from:

- i. Performance standard defects (see *N.J.A.C. 5:25-3.5*)
- ii. Appliance fixture and equipment defects (see *N.J.A.C. 5:25-1.3*).
- iii. Mechanical and electrical systems defects (see *N.J.A.C. 5:25-1.3* and *5:25-3.5 (k)* and *(l)*).

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iv. Major structural defects (see *N.J.A.C. 5:25-1.3* and *5:25-3.7*).

2. Two Year Warranty: For a period of two years from the warranty date each new home shall be free from:

i. Appliance, fixture and equipment defects only if such defects are covered under a manufacturer's warranty (see *N.J.A.C. 5:25-1.3*).

(1) NOTE: No warranty for appliances, fixtures or equipment shall exceed the length and scope of the warranty offered by the manufacturer.

ii. Mechanical and electrical system defects (see *N.J.A.C. 5:25-3.6*).

iii. Major structural defects (see *N.J.A.C. 5:25-1.3* and *5:25-3.7*).

3. Ten Year Warranty: For a period of 10 years from the warranty date on each new home shall be free from:

i. Major structural defects (see *N.J.A.C. 5:25-1.3*).

§ 5:25-3.3 Builder responsibilities

(a) Each builder shall be responsible for the correction of any defect which appears during any of the warranty period specified in this section, unless such responsibility is otherwise assumed by the private plan of which he is a member. Participants in the State Plan shall be responsible for correction of defects for the first two years of the warranty.

(b) The builder's responsibility in the case of a defect covered by this warranty shall include removal of the defects by repair or replacement or payment of the reasonable cost of repair or replacement. The choice as between repair, replacement or payment is the builders. The builder's responsibility shall include actual reasonable shelter expenses during repairs.

(c) Steps taken by the builder to correct defects shall not be deemed to extend the term of the warranty beyond that specified in this section.

(d) Written notice of a defect in any item under the warranty must be received by the builder not later than seven calendar days after the date on which the warranty on that item expires.

§ 5:25-3.4 Warranty exclusions

(a) The following are not included in the warranty required by this subchapter:

1. Any portion of a covered home which is not completed by the warranty date; except that, after completion, such portions will be covered until the end of the warranty period specified for that portion, pursuant to *N.J.A.C. 5:25-3.2*. Builder failure to complete construction of such portions may constitute the basis for denial, supervision, or revocation of registration pursuant to *N.J.A.C. 5:25-2.5*. Any item for the completion of which funds are being held in escrow shall be deemed to be an incompleteness rather than a defect. If such item exhibits a defect after the release of the es-

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crowded funds, then it shall be included in the warranty. In all cases, the warranty period shall be deemed to have commenced on the warranty date.

2. Defects in outbuilding (except that outbuildings which contain the plumbing, electrical, heating, or cooling systems serving the home are covered), swimming pools and other recreational facilities, driveways, walkways, unattached patios, boundary walls, retaining walls which are not necessary for the home's structural stability, fences, landscaping (including sodding, seeding, shrubs, trees and plantings), offsite improvements, or any other improvements not a part of the home itself.

3. Bodily injury, damage to personal property, or damage to real property which is not part of the home.

4. Any damage to the extent it is caused or made worse by:

i. Negligent or improper maintenance or improper operation by anyone other than the builder or his employees, agents or subcontractors, or;

ii. Failure of anyone other than the builder or his employees, agents or subcontractors to comply with the warranty requirement of manufacturers of appliances, equipment or fixtures, or;

iii. Failure to give notice to the builder of any defect within the time frame established under N.J.A.C. 5:25-3.3(e) and 5:25-5.5(b) or the applicable private warranty plan; or

iv. Changes of the grading of the ground by anyone other than the builder, or his employees, agents or subcontractors, or;

v. Failure to take timely action in emergent cases to minimize any loss or damage.

5. Any defect in, or caused by, materials or work supplied by anyone other than the builder, or his employees, agents or subcontractors. The builder shall, however, be responsible for any defects in or damage to any materials or work not installed by the builder when the defect or damage is the direct consequence of defects in materials or work installed by the builder which is not in accordance with accepted industry standards;

6. Normal wear and tear or normal deterioration in accordance with normal industry standards;

7. Accidental loss or damage from acts of nature such as, but not limited to; fire, explosion, smoke, water escape, changes which are not reasonably foreseeable in the level of the underground water table, glass breakage, windstorm, hail, lightning, falling trees, aircraft, vehicles, flood and earthquake. However, soil movement (from causes other than flood and earthquake) is not excluded;

8. Insect damage;

9. Any loss or damage which arises while the home is being used primarily for non-residential purposes;

10. Changes, alterations, or additions made to the home by anyone after initial occupancy, except those performed by the builder as his obligation under this program;

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11. Any defect caused to a finished surface material or any work supplied by anyone other than the Builder/Warrantor, or his employees, agents, or sub-contractors in that, it is determined the installer has accepted the Builder/Warrantor's surface to apply the finish material;

12. Any materials and/or workmanship furnished and installed by the Builder/Warrantor that does not comply with the specifications in a sales agreement or contract which is not defective;

13. Consequential damages to personal property are excluded, consequential damages to real property as a result of a defect or repair of a defect are covered.

(b) Other exclusions are included in the performance standards (5:25-3.5) to better define those standards and are identified by "Exclusion".

§ 5:25-3.5 Performance standards

(a) The following performance standards set minimum standards which prescribe the level for quality of materials and performances in workmanship for the construction of new homes.

1. To the extent that detailed minimum performance standards for construction have not been enumerated in these Performance Standards, builders shall construct homes in accordance with good industry practice which assures quality of materials and workmanship. Likewise, the validity of any home buyer's claims for defects for which a standard has not been enumerated here shall be determined on the basis of good industry practice which assures quality of materials and workmanship, and any conciliation or arbitration of such claims shall be conducted accordingly.

2. The Performance Standards list specific items with each separate area of coverage.

(b) Rules concerning site work are as follows:

1. Grading:

i. Possible Deficiency: Settling of ground around foundation, utility trenches or other areas on the property where excavation and back fill have taken place that affect drainage away from the house.

(1) Performance standard: Settling of ground around foundation walls, utility trenches or other filled areas: which exceeds a maximum of six inches from finished grade established by the Builder/Warrantor.

(2) Builder/Warrantor responsibility: If Builder/Warrantor has provided final grading, Builder shall fill settled areas affecting proper drainage, one time only, during the first year Warranty period. Builder/Warrantor is then responsible for removal and replacement of shrubs and other landscaping installed by the Builder/Warrantor affected by placement of the fill.

2. Drainage:

i. Possible Deficiency: Improper grades and swales which cause standing water and affects the drainage in the immediate area surrounding the home.

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(1) Performance standard: Necessary grades and swales shall be established to provide proper drainage away from the house. Site drainage under this warranty is limited to those immediate grades and swales surrounding the home. Standing or ponding water within the immediate surrounding area of the home shall not remain for a period longer than 24 hours after a rain. Where swales are draining from adjoining properties or where a sump pump discharges, an extended period of 48 hours is to be allowed for the water to dissipate. The possibility of standing water after an unusually heavy rainfall should be anticipated and is not to be considered a deficiency. No grading determination is to be made while there is frost or snow or when the ground is saturated.

(2) Exclusion: Standing or ponding water on the property which does not directly affect the immediate area surrounding the foundation of the home, caused by unusual grade conditions, retainage of treed areas, or sodding done by the homeowner is not considered a defect.

(3) Builder/Warrantor responsibility: Responsible for initially establishing the proper grades, swales and drainage away from the home.

(4) Owner responsibility: The owner is responsible for maintaining such grades and swales once properly established by the Builder/Warrantor to prevent runoffs and erosion of the soil.

(5) Exclusion: Soil erosion and runoff caused by failure of the owner to maintain the properly established grades, drainage structures and swales, stabilized soil, sodded, seeded and landscaped areas; are excluded from the Warranty.

ii. Possible Deficiency: Grassed or landscaped areas which are disturbed or damaged due to work on the property in correcting a deficiency.

(1) Performance standard: Landscaped areas which are disturbed during repair work is a defect.

(2) Builder/Warrantor responsibility: Restore grades, seed and landscape to meet original condition.

(3) Exclusion: Replacement of trees and large bushes which existed at the time the house was constructed or those added by the owner after occupancy or those which subsequently die are excluded from Warranty Coverage.

(c) Rules concerning concrete are as follows:

1. Cast-in place concrete:

i. Possible Deficiency: Basement or foundation wall cracks, other than expansion or control joints.

(1) Performance standard: Non-structural cracks are not unusual in concrete foundation walls. Cracks one-eighth inch in width or greater are considered excessive.

(2) Builder/Warrantor responsibility: Repair non-structural cracks in excess of one-eighth inch by surface patching. These repairs should be made toward the end of the first year of ownership to permit normal stabilizing of the home by settling.

ii. Possible Deficiency: Cracking of basement floor.

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(1) Performance standard: Minor cracks in concrete basement floors are common. Cracks exceeding one quarter inch width or one quarter inch in vertical displacement is a deficiency.

(2) Builder/Warrantor responsibility: Repair cracks exceeding maximum tolerance by surface patching or other methods, as required.

iii. Possible Deficiency: Cracking of attached garage floor slab.

(1) Performance standard: Cracks in garage floor slabs in excess of one quarter inch in width or one quarter inch in vertical displacement is a deficiency.

(2) Builder/Warrantor responsibility: Repair excessive cracks by chipping out and surface patching or other methods, as may be required.

iv. Possible Deficiency: Cracks in attached patio slab.

(1) Performance standard: Cracks in excess of one quarter inch in width or one quarter inch in vertical displacement are defects. An "attached patio" is defined as a concrete patio slab on grade which is an integral part of the home being structurally supported by footings, block walls, or reinforced concrete and connected to the foundation.

(2) Exclusion: Patio slabs which are poured separately, and abut the house are excluded from warranty coverage.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall make repairs as required. Where cracks are caused by settlement or improper installation, Builder/Warrantor shall replace that portion which has settled and finish as close as possible to match the existing surface. Where a major portion of the patio has cracked, the entire slab shall be replaced.

v. Possible Deficiency: Cracks in concrete slab-on grade floors, with finish flooring.

(1) Performance standard: Cracks which rupture or significantly impair the appearance or performance of the finish flooring material, is a deficiency.

(2) Builder/Warrantor responsibility: Determine the cause for the cracking, and correct (remove and replace if required). Repair cracks as required, so as not to be apparent when the finish flooring material is in place. Repair or replace finish flooring. (See "(h). FINISHES").

vi. Possible Deficiency: Uneven concrete floor slabs.

(1) Performance standard: Except for basement floors or where a floor or portion of floor has been designed for specific drainage purposes, concrete floors in rooms designed for habitability shall not have pits, depressions or area of unevenness exceeding 1/4 inch in 32 inches, or slopes in excess of 1/240 of room width or length (i.e.: 10.0 wide room-not to exceed 1/2 inch out of level).

(2) Builder/Warrantor responsibility: Determine cause and repair/replace to meet the Standard. Where applicable, surface patching is an accepted method of repair. Reinstall or replace any finish flooring material as necessary.

vii. Possible Deficiency: Pitting, scaling or spalling of concrete work.

(1) Performance standard: Concrete surfaces shall not disintegrate to the extent that the aggregate is exposed and loosened under normal conditions of weathering and use is a deficiency.

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(2) Builder/Warrantor responsibility: Take whatever corrective action is necessary to repair or replace defective concrete surfaces.

(3) Exclusion: Deterioration caused by salt, chemicals, implements used and other factors beyond Builder/Warrantor control.

viii. Possible Deficiency: Excessive powdering or chalking of concrete surfaces.

(1) Performance standard: Excessive powdering or chalking of concrete surfaces is a deficiency, but should not be confused with normal surface dust that may accumulate for a short period after the home is occupied.

(2) Builder/Warrantor responsibility: Take whatever corrective action is necessary to treat, repair or resurface defective areas.

ix. Possible Deficiency: Separation of brick or masonry edging from concrete slab and step.

(1) Performance standard: It is common for the joint to crack between concrete and masonry due to the dissimilarity of the materials. Cracks in excess of one quarter inch is a deficiency.

(2) Builder/Warrantor responsibility: Grout crack fully and reset loose masonry where required. Replacement of masonry material, if required, shall match the existing as close as possible.

2. Construction and control joints:

i. Possible Deficiency: Separation or movement of concrete slabs within the structure at construction and control joints.

(1) Performance standard: None.

(2) Exclusion: Concrete slabs within the structure are designed to move at construction and control joints and is not a deficiency.

(3) Builder/Warrantor responsibility: None.

(4) Homeowner responsibility: Maintenance of joint material.

(d) Rules concerning masonry are as follows:

1. Unit masonry (brick, block and stone):

i. Possible Deficiency: Cracks in non-bearing or non-supporting walls.

(1) Performance standard: Small shrinkage cracks are not unusual running through masonry and mortar joints. Cracks in excess of one-eighth inch in width is a deficiency.

(2) Builder/Warrantor responsibility: Repair non-structural shrinkage cracks in excess of 1/8 inch by pointing or patching. Repairs shall be made near the end of the first year warranty period.

ii. Possible Deficiency: Cracks in bearing or supporting masonry walls.

(1) Performance standard: Vertical or diagonal cracks which do not affect the structural ability of masonry bearing walls, are not unusual. Cracks in excess of one-eighth in width are a deficiency.

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(2) Builder/Warrantor responsibility: Repair shrinkage cracks in excess of 1/8 inch by pointing or patching. Where the structural integrity of the wall is affected, suitable repair or replacement shall be done to eliminate the condition.

iii. Possible Deficiency: Horizontal cracks in basement and foundation walls.

(1) Performance standard: Horizontal cracks in the joints of masonry walls are not common but may occur. Cracks one-eighth inch or more in width are deficiencies.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair cracks between one eighth and three sixteenths inch in width by pointing and patching. Cracks exceeding three sixteenths inch shall be investigated by the builder to determine the cause. Builder shall take the necessary steps to remove the cause and make repairs by pointing and patching, reinforcement or replacement of the defective courses.

iv. Possible Deficiency: Cracks in masonry walls or veneer above grade.

(1) Performance standard: Small cracks are common in mortar joints of masonry construction. Cracks one eighth inch or greater in width are deficiencies.

(2) Builder/Warrantor responsibility: Repair cracks and voids in excess of one eighth inch by surface pointing. These repairs should be made toward the end of the first year warranty period to permit the home to stabilize and normal settlement to occur. Builder/Warrantor is not responsible for color variations between existing and new mortar, however, it shall be made to match as close as possible.

v. Possible Deficiency: Cracking, settling, or heaving of stoops and steps.

(1) Performance standard: Stoeps and steps are not to settle or heave in excess of one inch in relation to the house structure. Cracks, except hairline cracks less than one eighth inch, are not acceptable in concrete stoeps. A separation of up to one half inch is permitted where the stoep or steps abut the house or where an expansion strip has been installed.

(2) Builder/Warrantor responsibility: Take whatever corrective action is required to meet acceptable standards. In a case where repair is made to the concrete surface, it is required that such repair match the adjoining surfaces as closely as possible or the entire area be resurfaced or replaced.

vi. Possible Deficiency: Standing water on stoeps, steps, porches and attached concrete patios.

(1) Performance standard: Standing water is a deficiency if it is a hazard to individuals and/or causes damage to the home, or in cases where standing water exists due to settlement or heaving as defined under paragraph (d)1v. above.

(2) Builder/Warrantor responsibility: Take whatever corrective action is necessary to eliminate standing water.

2. Stucco and cement plaster:

i. Possible Deficiency: Cracking or spalling of stucco and cement plaster.

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(1) Performance standard: Hairline cracks in stucco or cement plaster are common especially if applied directly to masonry back-up. Cracks greater than one eighth inch in width or spalling of the finish surface is a deficiency.

(2) Builder/Warrantor responsibility: Scrape out cracks and spalled areas. Fill with cement plaster or stucco to match finish and color as close as possible.

NOTE: Builder not responsible for failure to match color or texture, due to nature of the material.

(e) Rules concerning carpentry are as follows:

1. Rough carpentry:

i. Possible Deficiency: Floors squeak, due to improper installation or loose subfloors.

(1) Performance standard: A large area of floor squeak which is noticeable, loud and objectionable is a defect.

(2) Exclusion: Squeak proof floor cannot be guaranteed, an isolated floor squeak is not a defect.

(3) Builder/Warrantor responsibility: Correct the problem if caused by faulty construction within reasonable repair capability. Where a finished ceiling exists under the floor, the corrective work may be attempted from the floor side. Where necessary, remove the finish floor material to make the repair and reinstall or replace if damaged.

ii. Possible Deficiency: Uneven wood framed floors.

(1) Performance standard: Floors which are more than one quarter inch out of level within any 32 inch measurement is a deficiency. Floor slope within any room which exceeds one-two hundred fortieths of the room width or length is a deficiency (that is, 10'0" wide room--not to exceed one-half inch out of level.)

(2) Builder/Warrantor responsibility: Correct or repair to meet the allowances at the above standard.

iii. Possible Deficiency: Bowed stud walls or ceilings.

(1) Performance standard: All interior and exterior frame walls or ceilings have slight variations on the finish surfaces. Bowing should not be visible so as to detract from the finished surface. Walls or ceilings which are bowed more than one quarter inch within a 32 inch horizontal or vertical measurement.

(2) Builder/Warrantor responsibility: Exterior and interior frame walls or ceilings bowed in excess of the allowable standard shall be corrected to meet the allowances of the above standard.

iv. Possible Deficiency: Wood frame walls out of plumb.

(1) Performance standard: Wood frame walls which are out of plumb more than three quarters inch in an eight foot vertical measurement is a deficiency.

(2) Builder/Warrantor responsibility: Make necessary repairs to meet the allowable Standard.

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v. Possible Deficiency: Minor warping, checking or splitting of wood framing is common as the wood dries out, and is not considered a deficiency. A condition, which affects the integrity of the member or any applied surface material is a deficiency.

(1) Builder/Warrantor responsibility: Where a problem exists and the surface material is affected, builder shall repair, replace or stiffen the frame member as required.

vi. Possible Deficiency: Exterior sheathing and subflooring which delaminates or swells.

(1) Performance standard: Sheathing and subflooring when properly installed for its intended use and delaminates or swells on the side a finish material has been applied is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace subflooring or sheathing as required. Replacement of the finish materials when necessary shall be done to match the existing as closely as possible.

2. Finish carpentry:

i. Possible Deficiency: Unsatisfactory quality of finished exterior trim and workmanship.

(1) Performance standard: Joints between exterior trim elements, and siding or masonry which are in excess of three-eighths inch is a deficiency. In all cases, the exterior trim abutting masonry and siding shall be capable of performing its function to exclude the elements.

(2) Builder/Warrantor responsibility: Repair open joints and touch up finish coating where required to match existing as close as possible. Caulk open joints between dissimilar materials.

ii. Possible Deficiency: Unsatisfactory quality of finished interior trim and workmanship.

(1) Performance standard: Joints between moldings and adjacent surfaces which exceed 1/8 inch in width is a defect.

(2) Builder/Warrantor responsibility: Repair defective joints and touch up finish coating where required to match as close as possible.

iii. Possible Deficiency: Surface defects in finished woodwork and millwork such as checks, splits, and hammer marks.

(1) Performance standard: Finished woodwork and millwork is to be smooth and without surface marks. Finished surfaces which fall beyond the limits of the Quality Standards of the Architectural Woodwork Institute is a deficiency.

(2) Builder/Warrantor responsibility: Correct repairable defects; sanding, filling, or puttying is acceptable to return the surface to its original condition. Replace material not repairable, refinish and restore to match surrounding surfaces as closely as possible.

iv. Possible Deficiency: Exposed nail heads in woodwork.

(1) Performance standard: Material used to fill nail holes has a tendency to shrink and dry up after a period of time and is not considered a deficiency. Nail holes which have not been filled on finished painted wood work is a deficiency.

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(2) Exclusion: Nail holes do not have to be filled where the surface finish is not conducive or so designed to have nail holes filled because of the product.

(3) Builder/Warrantor responsibility: Fill nail holes where required and if necessary, touch up paint to match as close as possible.

(f) Rules concerning thermal and moisture protection are as follows:

1. Waterproofing:

i. Possible Deficiency: Leaks in basement or in foundation/crawlspace.

(1) Performance standard: Leaks resulting in actual trickling of water through the walls or seeping through the floor are deficiencies.

(2) Exclusion: Leaks caused by landscaping improperly installed by owner, or failure by owner to maintain proper grades are excluded from the warranty. Dampness in basement and foundation walls or in concrete basement and crawlspace floors is often common to new construction and is not a deficiency.

(3) Builder/Warrantor responsibility: Take such action as is necessary to correct basement and crawlspace leaks, except where the cause is determined to be the result of owner negligence. Where a sump pit has been installed by the Builder/Warrantor in the affected area but the sump pump was not contracted for or installed by the Builder/Warrantor, no action is required until a properly sized pump is installed by the owner in an attempt to correct the condition. Should the condition continue to exist, then the Builder/Warrantor shall take necessary action to correct the problem.

2. Insulation:

i. Possible Deficiency: Insufficient insulation.

(1) Performance standard: Insulation which is not installed around all habitable areas in accordance with established codes is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall install insulation of sufficient thickness and characteristics to meet the codes. In the case of dispute, cost for investigating the sufficiency of insulation and restoring areas to prior condition is to be borne by the homeowner if it is found that the standard has been met by the builder.

3. Louvers and vents:

i. Possible Deficiency: Insufficient attic and crawlspace ventilation.

(1) Performance standard: Attics and crawlspaces which are not properly vented causing moisture to accumulate resulting in damage to supporting members or insulation is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall install properly sized louvers or vents to correct deficiency.

ii. Possible Deficiency: Leaks due to snow or driven rain through louvers and vents.

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(1) Performance standard: Improperly installed louvers and vents that permit penetration of the elements under normal conditions is a deficiency.

(2) Exclusion: Properly installed louvers or vents may at times allow penetration of rain or snow under strong wind conditions and is not a deficiency.

(3) Builder/Warrantor responsibility: Take necessary steps to eliminate penetration of rain or snow under normal conditions if it is determined the installation was improper.

4. Exterior siding:

i. Possible Deficiency: Delamination, splitting, joint separation or deterioration of exterior siding.

(1) Performance standard: Exterior siding with joint separations or which delaminates, splits or deteriorates is a deficiency.

(2) Builder/Warrantor responsibility: Repair/replace only the damaged siding. Siding to match the original as close as possible, however, the owner shall be aware that the new finish may not exactly match the original surface texture or color.

ii. Possible Deficiency: Damaged siding or broken shingles.

(1) Performance standard: Damaged siding or broken shingles is a deficiency if document on a pre-closing walk through inspection form.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall replace or repair damaged siding if noted on a pre-closing walk through inspection form. If Builder/Warrantor does not perform a pre-closing walk through then the Builder/Warrantor will be responsible for the deficiency if reported by the owner.

(3) Owner responsibility: If a pre-closing walk through inspection is performed the deficiency should be reported on such report. If no walk through report exists the deficiency shall be reported in writing within 30 days of occupancy.

iii. Possible Deficiency: Loose or fallen siding.

(1) Performance standard: All siding which is not installed properly so as not to come loose or fall off is a deficiency.

(2) Builder/Warrantor responsibility: Reinstall or replace siding and make it secure.

5. Roofing:

i. Possible Deficiency: Roof or flashing leaks.

(1) Performance standard: Roof or flashing leaks that occur under normal weather conditions is a deficiency.

(2) Exclusion: Where cause is determined to result from severe weather conditions such as ice and snow build-up, high winds and driven rains.

(3) Builder/Warrantor responsibility: Correct any roof or flashing leaks which are verified to have occurred under normal weather conditions.

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ii. Possible Deficiency: Lifted, curled or torn roof shingles.

(1) Performance standard: Roof shingles which lift or curl during the first year of warranty coverage or tear loose during normal weather conditions is a deficiency.

(2) Builder/Warrantor responsibility: Repair or replace lifted, curled or torn shingles.

(3) Note: See N.J.A.C. 5:25-3.4(a)7. Warranty exclusions for exceptions to Builder/Warrantor Responsibility.

iii. Possible Deficiency: Standing water on built-up roofs.

(1) Performance standard: A properly pitched built-up roof is to drain water except for minor ponding. Dead flat roofs will retain a certain amount of water. Excessive ponding of water which causes leaking of the built-up roof is a deficiency.

(2) Builder/Warrantor responsibility: Repair all leaks due to or caused by standing water.

(3) Exclusion: Standing or ponding water is not considered a deficiency.

6. Sealants:

i. Possible Deficiency: Water or air leaks in exterior walls due to inadequate caulking.

(1) Performance standard: Joints and cracks in exterior wall surfaces and around openings which are not properly caulked to exclude the entry of water or excessive drafts is a deficiency.

(2) Builder/Warrantor responsibility: Repair and/or caulk joints or cracks in exterior wall surfaces as required to correct deficiency one time during the first year of the warranty period.

(3) Owner responsibility: Maintain caulking once the condition is corrected.

7. Sheet metal:

i. Possible Deficiency: Gutters and downspouts leak.

(1) Performance standard: Gutters and downspouts which leak is a deficiency. Gutters which are improperly pitched to drain water is a deficiency.

(2) Exclusion: Standing water in gutters is acceptable if it does not exceed one inch in depth.

(3) Builder/Warrantor responsibility: Repair leaks and pitch gutters to drain properly to meet standard.

(4) Owner responsibility: Responsible to keep gutters and downspouts free from leaves and debris to prevent overflow.

(g) Rules concerning doors and windows are as follows:

1. Doors: interior and exterior:

i. Possible Deficiency: Warpage of interior or exterior doors.

(1) Performance standard: Interior and exterior doors that warp so as to prevent normal closing and fit is a deficiency. The maximum allowable warpage of an interior door is one-quarter inch when measured from top to bottom vertically or diagonally.

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(2) Builder/Warrantor responsibility: Repair or replace as may be required. New doors to be re-finished to match the original as close as possible.

ii. Possible Deficiency: Door binds against jamb or head of door frame. Does not lock.

(1) Performance standard: Passage doors that do not open and close freely without binding against the door frame is a deficiency. Lock bolt is to fit the keeper to maintain a closed position.

(2) Builder/Warrantor responsibility: Adjust door and keeper to operate freely.

iii. Possible Deficiency: Door panels shrink and expose bare wood.

(1) Performance standard: None.

(2) Exclusion: Door panels will shrink due to the nature of the material, exposing bare wood at the edges and is not a deficiency.

(3) Builder/Warrantor responsibility: None.

iv. Possible Deficiency: Door panels split.

(1) Performance standard: Door panels that have split to allow light to be visible through the door is a deficiency.

(2) Builder/Warrantor responsibility: If light is visible, fill crack and finish panel to match as close as possible. Correct one time during first year of warranty. If panel cannot be repaired to hide crack, the panel or the door itself shall be replaced and finished to match original.

v. Possible Deficiency: Bottom of doors rub on carpet surface.

(1) Performance standard: Where it is understood by Builder/Warrantor and Homeowner that carpet is planned to be installed as a floor finish, whether by the Builder/Warrantor or Homeowner, the bottom of the doors which rub or disturb the carpet is a deficiency.

(2) Exclusion: Where carpet is selected by the Homeowner having excessive high pile, the Homeowner is responsible for any additional door undercutting.

(3) Builder/Warrantor responsibility: Undercut doors as required.

vi. Possible Deficiency: Excessive opening at the bottom of interior doors.

(1) Performance standards: Passage doors from room to room that have an opening between the bottom of the door and the floor finish material in excess of one and one-half inches is a deficiency. Closet doors having an opening in excess of two inches is a deficiency.

(2) Builder/Warrantor responsibility: Make necessary adjustment or replace door to meet the required tolerance.

2. Garage doors (attached garage):

i. Possible Deficiency: Garage door fails to operate or fit properly.

(1) Performance standard: Garage doors that do not operate and fit the door opening within the manufacturer's installation tolerances is a deficiency. Some entrance of the elements can be expected under heavy weather conditions and is not considered a deficiency.

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(2) Builder/Warrantor responsibility: Make necessary adjustments to meet the manufacturer's installation tolerances.

(3) Exclusion: No adjustment is required when cause is determined to result from the owner's installation of an electric door opener.

3. Wood, plastic and metal windows:

i. Possible Deficiency: Malfunction of windows.

(1) Performance standard: Windows which do not operate in conformance with manufacturer's design standards is a deficiency.

(2) Builder/Warrantor responsibility: Consult with manufacturer when necessary and make necessary adjustments for windows to operate and meet the Standard.

ii. Possible Deficiency: Double hung windows do not stay in place when open.

(1) Performance standard: Double hung windows are permitted to move within a two inch tolerance, up or down when put in an open position. Any excessive movement exceeding the tolerance is a deficiency.

(2) Builder/Warrantor responsibility: Adjust sash balances one time only during the first year warranty period where possible instruct the owner on the method of adjustment for future repair.

iii. Possible Deficiency: Condensation or frost on window frames and glass.

(1) Performance standard: None.

(2) Exclusion: Window glass and frames will collect condensation on the frame and glass surface when humidity and temperature differences are present. Condensation is usually the result of temperature/humidity conditions in the home.

(3) Builder/Warrantor responsibility: None.

4. Hardware:

i. Possible Deficiency: Hardware does not work properly, fails to lock or perform its intended purpose.

(1) Performance standard: All hardware installed on doors and windows which does not operate properly is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall adjust, repair or replace hardware as required.

5. Storm doors, windows and screens:

i. Possible Deficiency: Storm doors and windows do not operate or fit properly.

(1) Performance standard: Storm doors and windows when installed and do not operate or fit properly to provide the protection for which they are intended is considered a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall make necessary adjustments for proper fit and operation. Replace when adjustment can not be made.

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ii. Possible Deficiency: Screen panels do not fit properly. Screen mesh is torn or damaged.

(1) Performance standard: Rips or gouges in the screen mesh reported on a pre-closing walk through inspection report or openings between the screen panel and frame are deficiencies.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace rips and gouges in the screen mesh if reported on the pre-closing walk through inspection. The screen panels shall be adjusted to fit properly in frame one time only during the first year of warranty. If there is no pre-closing walk through inspection the Builder/Warrantor is responsible to repair deficiency when reported by owner.

(3) Owner responsibility: The owner shall be responsible to notify Builder/Warrantor within 30 days from the warranty date or the date on which the screens are furnished if there was no pre-closing walk through inspection.

6. Weatherstripping and seals:

i. Possible Deficiency: Drafts around doors and windows.

(1) Performance standard: Weatherstripping is required on all doors leading directly to the outside from a habitable area. Some infiltration is normally noticeable around doors and windows, especially during high winds. Excessive infiltration resulting from opening in poorly fitted doors or windows, or poorly fitted weatherstripping is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall adjust or correct poorly fitted windows or doors, or poorly fitted weatherstripping.

7. Glass and glazing:

i. Possible Deficiency: Broken glass.

(1) Performance standard: Broken glass is a deficiency if it is reported on a pre-closing walk through inspection report.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall replace if reported on a pre-closing walk through inspection report. If no report exists, the Builder/Warrantor shall replace if deficiency is reported by owner.

(3) Owner responsibility: Owner shall notify the Builder/Warrantor within 30 days from warranty date if no pre-closing walk through inspection report exists.

ii. Possible Deficiency: Clouding and condensation on inside surfaces of insulated glass.

(1) Performance standard: Insulated glass which clouds up or has condensation on the inside surfaces of the glass is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall replace glass in accordance with window and glass manufacturer's requirements.

(h) Rules concerning finishes are as follows:

1. Lath and plaster:

i. Possible Deficiency: Cracks in plaster wall and ceiling surfaces.

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(1) Performance standard: Noticeable cracks in plaster wall and ceiling surfaces is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair cracks and touch up paint to match as close as possible, one time only. Such conditions should be reported near the end of the first year warranty date to allow for normal movement in the home.

2. Gypsum wallboard:

i. Possible Deficiency: Defects caused by poor workmanship such as cracks over door and window frames, over archways, blisters in tape, excess compound in joints, exposed corner beads, nail pops, or trowel marks.

(1) Performance standard: Slight defects such as occasional nail pops, seam lines and cracks are common gypsum wallboard installations. Blisters in tape, cracks over door and window frames and over archways, excess compound in joints, trowel marks, nail popping and exposed corner beads are deficiencies. Nail pops are a defect only when there are signs of spackle compound cracking or falling away.

(2) Exclusion: Depressions or slight mounds at nail heads are not considered deficiencies.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall correct such defects to acceptable tolerance and repaint affected areas one time only to match as close as possible. Where excessive repair has been made the entire area shall be painted. Such conditions shall be reported near the end of the first year warranty date to allow for normal settlement of the home.

3. Hard surface flooring (flagstone, marble, quarry tile, slate, ceramic tile, etc.):

i. Possible Deficiency: Flooring cracks or becomes loose.

(1) Performance standard: Ceramic tile, flagstone or similar hard surfaced sanitary flooring which crack or become loose is a defect. Subfloor and wallboard are required to be structurally sound, rigid and suitable to receive finish.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall determine and correct the cause for the cracking or loosening of the finish material. Replace cracked material and reset loose flooring.

(3) Exclusion: Cracking and loosening of flooring caused by the Owner's negligence is not a deficiency.

(4) The Builder/Warrantor is not responsible for slight color and pattern variations or discontinued patterns of the manufacturer. It shall not be required to replace the entire finish when the new material consists of less than 25 percent of the finish area.

ii. Possible Deficiency: Cracks appear in grouting of ceramic tile joints or at junctions with other material such as a bathtub or shower.

(1) Performance standard: Cracks in grouting of ceramic tile joints are deficiencies. Regrouting of these cracks is a maintenance responsibility of the homeowner within the life of the home after the first year of warranty.

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(2) Exclusion: Open cracks or loose grouting, where the wall surface abuts the flashing lip at a tub or shower basin, are considered Owner's maintenance and any resultant damage to other finish surfaces due to leaks, etc. are not considered a deficiency.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall repair grouting as necessary one time only within the first year of warranty.

4. Resilient flooring:

i. Possible Deficiency: Nail pops appear on the surface of resilient flooring.

(1) Performance standard: Readily apparent nail pops are a deficiency.

(2) Exclusion: See *N.J.A.C. 5:23-3.4(a)11*.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall correct nail pops that have caused damage to the floor material and repair or replace damaged floor covering in the affected area.

(4) Builder/Warrantor is not responsible for discontinued patterns or color variations.

ii. Possible Deficiency: Depressions or ridges appear in the resilient flooring due to subfloor irregularities.

(1) Performance standard: Readily apparent depressions or ridges exceeding one eighth inch is a deficiency. The ridge or depression measurement is taken as the gap created at one end of a six-inch straight edge placed over the depression or ridge with three inches on one side of the defect held tightly to the floor.

(2) Exclusion: See *N.J.A.C. 5:25-3.4(a)11*.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall take required corrective action to bring deficiency within acceptable tolerances so as to be not readily visible. Builder is not responsible for discontinued patterns or color variations in floor covering, owner neglect or abuse, nor installations performed by others.

iii. Possible Deficiency: Resilient flooring or base loses adhesion.

(1) Performance standard: Resilient flooring or base that lifts, bubbles, or becomes unglued is a deficiency.

(2) Exclusion: See *N.J.A.C. 5:25-3.4(a)11*.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace resilient flooring or base as required. Builder is not responsible for discontinued patterns or color variation.

iv. Possible Deficiency: Seams or shrinkage gaps show at resilient flooring joints.

(1) Performance standard: Gaps in excess of one-eighth inch in width in resilient floor covering joints is a deficiency. Where dissimilar materials abut, a gap in excess of three-sixteenths inch is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall take required action to correct the cause of the deficiency.

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(3) The Builder/Warrantor is not responsible for discontinued patterns or color variations of floor covering.

5. Plywood wall covering:

i. Possible Deficiency: Variations in paneling color; scratches or checks on the finished surface.

(1) Performance standard: Plywood paneling pattern and color will often vary and this is not a deficiency. Scratches on the paneling surface are deficiencies if reported on a pre-closing walk through inspection report.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace damaged paneling when the deficiency has been reported on the pre-closing walk through inspection report. Builder is not responsible for discontinued panel or color variations. If no pre-closing walk through was done, the Builder/Warrantor is responsible to repair damage if notified by owner.

(3) If damaged paneling cannot be replaced with new paneling to owner's satisfaction, the deficiency may be repaired within reasonable standard of good materials and workmanship.

(4) The owner shall notify the Builder/Warrantor within 30 days of the warranty date if no pre-closing walk through inspection report exists.

6. Finished wood flooring:

i. Possible Deficiency: Dents, chips, knotpops, open joints or cracks in wood flooring. Dents and chips are deficiencies if reported on a pre-closing walk through inspection report.

(1) Performance standard: Dents, chips, knotpops, open joints or cracks in floor boards of finished wood flooring which exceed the manufacturer's quality standards of the wood flooring grade are considered deficiencies. Manufacturer's grade quality standards shall be as defined by: Wood and Synthetic Flooring Institute, National Oak Flooring Association and Maple Flooring Manufacturer's Association.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall determine the cause for deficiencies and correct. Dents and chips are to be corrected if reported on a pre-closing walk through inspection report. If the inspection was not conducted, then the Builder/Warrantor shall correct if notified by the owner. For repairable deficiency, repair cracks, chips or dents by filling and refinishing to match the wood surface as close as possible. For non-repairable deficiencies replace and finish affected area to match remaining flooring as closely as possible.

(3) The owner shall report such deficiencies to Builder/Warrantor within 30 days of the warranty date if there was no pre-closing walk through inspection.

7. Painting:

i. Possible Deficiency: Knot and wood stains appear through paint on exterior.

(1) Performance standard: Excessive knot and wood stains which bleed through the paint are considered deficiencies.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall seal affected areas where excessive bleeding of knots and stains appear and touch up paint to match.

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ii. Possible Deficiency: Exterior paint or stain peels, deteriorates or fades.

(1) Performance standard: Exterior paints or stains that peel or deteriorate during the first year of ownership is a deficiency.

(2) Exclusion: Fading, however, is normal and subject to the orientation of painted surfaces to the climatic conditions which may prevail in the area. Fading is not a deficiency.

(3) Builder/Warrantor responsibility: shall properly prepare and refinish affected areas, matching color as closely as possible. Where finish repairs affect the majority of the surface area, the whole area should be refinished. The warranty on the newly repainted surfaces will not extend beyond the original warranty period.

iii. Possible Deficiency: Painting required as corollary repair because of other work.

(1) Performance standard: Necessary repair of a painted surface required under this warranty is to be refinished to match surrounding areas as closely as possible.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall refinish repaired areas to meet the standard as required.

iv. Possible Deficiency: Mildew or fungus forms on painted or factory finished surfaces.

(1) Performance standard: None.

(2) Exclusion: Mildew or fungus that forms on a painted or factory finished surface when the structure is subject to various exposures (that is, ocean, lake, riverfront, heavily wooded areas or mountains) is not a deficiency.

(3) Builder/Warrantor responsibility: None.

v. Possible Deficiency: Deterioration of varnish or lacquer finishes.

(1) Performance standard: Natural finishes on interior woodwork which deteriorate during the first year of ownership is a deficiency.

(2) Exclusion: Varnish-type finishes used on the exterior will deteriorate rapidly and are not covered by the warranty.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall refinish affected areas of natural finished interior woodwork, matching the color as closely as possible.

vi. Possible Deficiency: Interior paint coverage.

(1) Performance standard: Interior paint not applied in a manner sufficient to visually cover wall, ceiling and trim surfaces is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repaint wall, ceiling or trim surfaces where inadequate paint has been applied. Where a large area is affected the entire surface shall be repainted.

vii. Possible Deficiency: Paint splatters and smears on finish surfaces.

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(1) Performance standard: Paint stains on porous surface which are excessive that detract from the finish and which cannot be removed by normal cleaning methods and are reported on a pre-closing walk through inspection report are considered deficiencies.

(2) Exclusion: Minor paint splatter and smears on impervious surfaces which cannot be easily removed is considered as homeowner maintenance and not a deficiency.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall remove paint stains without affecting the finish of the material, or replace the damaged surface if stain cannot be removed if reported on a pre-closing walk through inspection report. If no such inspection was done, the Builder/Warrantor shall correct if notified by the owner.

(4) The owner shall notify the builder within 30 days of the warranty date if a pre-closing walk through inspection report was not completed.

8. Wallcovering:

i. Possible Deficiency: Peeling of wallcovering installed by builder.

(1) Performance standard: Peeling of wallcovering is a deficiency, unless it is due to owner's abuse or negligence.

(2) Exclusion: See N.J.A.C. 5:25-3.4(a)11.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace defective wallcovering.

ii. Possible Deficiency: Mismatching in wallcovering pattern.

(1) Performance standard: Mismatched wall covering pattern over a large area that severely detracts from its intended purpose due to poor workmanship is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall remove mismatched wall covering and replace. Builder/Warrantor is not responsible for discontinued patterns or variations in color.

iii. Possible Deficiency: Lumps and ridges and nail pops in wallboard which appear after owner has wallcovering installed by others.

(1) Performance standard: None.

(2) Exclusion: Owner shall insure that the surface to receive wallcovering is suitable and assumes full responsibility should lumps, ridges and nail pops occur at a later date.

(3) Builder/Warrantor responsibility: None.

9. Carpeting:

i. Possible Deficiency: Seams in carpet.

(1) Performance standard: Seams in carpeting that separate due to improper installation is a deficiency.

(2) Exclusion: Carpeting material is not covered under the warranty.

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(3) Builder/Warrantor responsibility: The Builder/Warrantor shall correct to eliminate the separation.

ii. Possible Deficiency: Carpeting comes loose or excessive stretching occurs.

(1) Performance standard: Wall to wall carpeting that comes loose is a deficiency.

(2) Exclusion: Stretching that may occur in the carpeting is subject to the quality and surface over which it is laid and is not a deficiency.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall resecure loose carpeting one time during the first year of warranty coverage.

iii. Possible Deficiency: Spots on carpet, minor fading.

(1) Performance standard: Spots or stains on the carpeting is a deficiency if reported on a pre-closing walk through inspection report.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall remove spots and stains on a one time basis if reported on a pre-closing walk through inspection report. Replace when excessive spots and stains cannot be removed. If no pre-closing inspection report exists, the Builder/Warrantor shall correct when notified by owner.

(3) Exclusion: Fading is not a deficiency; and builder has no responsibility.

(4) The owner shall notify the Builder/Warrantor within 30 days from the warranty date if no pre-closing walk through inspection report exists.

(i) Rules concerning specialties are as follows:

1. Fireplaces:

i. Possible Deficiency: Fireplace or chimney does not draw properly causing smoke to enter the house.

(1) Performance standard: A properly designed and constructed fireplace or chimney is to function as intended. It is normal to expect that high winds can cause temporary negative draft situations. Similarly, negative draft situations can also be caused by obstructions such as large branches of trees too close to the chimney. In addition, the geographic location of the fireplace or its relationship to adjoining walls and roof may be the cause of negative draft conditions. In some cases, it may be necessary to open a window slightly to create an effective draft. Since negative draft conditions could be temporary, it is necessary the owner substantiate the problem to the Builder/Warrantor by constructing a fire so the condition can be observed.

(2) Builder/Warrantor responsibility: When determined the malfunction is based upon improper construction of the fireplace then take the necessary steps to correct the problem.

(3) Exclusion: Where it is determined that the fireplace is properly designed and constructed, but still malfunctions due to natural causes beyond the builder's control, builder is not responsible.

ii. Possible Deficiency: Chimney separation from structure to which it is attached.

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(1) Performance standard: Newly built fireplaces will often incur slight amounts of separation. Separation which exceeds one-half inch from the main structure in any 10 foot vertical measurement is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall determine the cause of separation and correct. Caulking or grouting is acceptable up to one half inch displacement.

2. Built-in sauna and steam bath units:

i. Possible Deficiency: Refer to the pertinent section of these Standards for deficiencies that may exist in construction, materials, finish and equipment of a steam bath or sauna unit constructed on-site.

(1) Performance standard: Built-in equipment such as sauna and steam bath units are to be constructed and must operate properly under the same applicable standard for finishes and mechanical and electrical equipment involved. Any deficiencies in finish materials or equipment referred to in these standards are considered deficiencies.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall make all necessary repairs or replacements including equipment covered under a manufacturer's warranty.

(j) Rules concerning kitchen cabinets and vanities are as follows:

1. Kitchen or vanity cabinet doors and drawers:

i. Possible Deficiency: Kitchen or vanity cabinet doors and drawers malfunction.

(1) Performance standard: Cabinet doors, drawers and other operating parts that do not function as designed are deficiencies if they are reported on a pre-closing walk through inspection report.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace operating parts if a pre-closing report exists. If no report exists, the Builder/Warrantor shall correct if notified by the owner.

(3) The owner shall notify the Builder/Warrantor within 30 days of the warranty date if a pre-closing walk through inspection was not conducted.

ii. Possible Deficiency: Surface cracks, delaminations and chips in high pressure laminates of vanity and kitchen cabinet countertops.

(1) Performance standard: Countertops fabricated with high pressure laminate coverings that delaminate, have chips, scratches, or surface cracks or joints between sheets exceed one sixteenth inch are considered deficiencies if reported on a pre-closing walk through inspection report.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace laminated surface covering having chips, cracks, scratches or joints exceeding the allowable width if reported on a pre-closing inspection report. If a pre-closing inspection report was not performed, the Builder/Warrantor shall correct when notified by the owner.

(3) The owner shall notify the Builder/Warrantor within 30 days at the warranty date if a pre-closing walk through inspection report does not exist.

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iii. Possible Deficiency: Warping of kitchen and vanity cabinet doors and drawer fronts.

(1) Performance standard: Warpage that exceeds one quarter inch as measured from the face of the cabinet frame to the further most point of warpage on the drawer or door front in a closed position is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall correct or replace door or drawer front as required.

iv. Possible Deficiency: Gaps between cabinets, ceiling and walls.

(1) Performance standard: Counter top, splash, base and wall cabinets are to be securely mounted. Gaps in excess of one quarter inch between wall and ceiling surfaces is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall make necessary adjustment of cabinets and top or close gap by means of moulding suitable to match the cabinet or counter top finish; or other acceptable means.

(k) Rules concerning mechanical systems are as follows:

1. Septic tank systems:

i. Possible Deficiency: Septic system fails to operate properly.

(1) Performance standard: Septic system is to be capable of properly handling normal flow of household effluent. It is, however, possible that due to freezing, soil saturation, changes in the ground water table or excessive use of plumbing or appliances, an overflow can occur. Periodic pumping of the septic tank is considered homeowner maintenance, and a normal need for pumping is not a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall take corrective action as required, if it is determined that malfunction is due to improper design or construction. Builder is not responsible for malfunctions which occur through owner negligence or abuse. Builder is also not responsible for malfunctions which occur due to acts of nature such as freezing and changes in the ground water table.

(3) Exclusion: The following are considered owner negligence or abuse as an exclusion under the warranty:

(A) Excessive use of water such as overuse of washing machine and dishwasher; including their simultaneous use.

(B) Connection of sump pump, roof drains or backwash from water conditioner, to the system.

(C) Placing of non-biodegradable items in the system.

(D) Addition of any harsh chemicals, greases or cleaning agents; and excessive amounts of bleaches or drain cleaners.

(E) Use of a food waste disposer not supplied by builder.

(F) Placement of impervious surfaces over the disposal area.

(G) Allowing vehicles to drive or park over the disposal area.

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(H) Failure to periodically pump out the septic tank, when required.

(4) Note: coverage is for first two years of warranty.

2. Plumbing:

i. Possible Deficiency: Plumbing pipes freeze.

(1) Performance standard: Drain, waste and water pipes are to be adequately protected to prevent freezing during normally anticipated cold weather. Freezing of pipes is a deficiency and covered only during the first year of the warranty.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall correct the condition responsible for pipes freezing, and repair piping damaged by freezing.

(3) The owner is responsible to maintain suitable temperatures in the home to prevent pipes from freezing. Homes which are periodically occupied such as summer homes, or where there will be no occupancy for an extended period of time must be properly winterized or periodically checked to insure a reasonable temperature is maintained. Leaks occurring due to owner's neglect and resultant damage are not the builder's responsibility.

ii. Possible Deficiency: Leakage from any piping.

(1) Performance standard: Leaks in any sanitary soil, waste vent and water piping are deficiencies and are covered during the first and second year of the warranty.

(2) Exclusion: Condensation on piping does not constitute leakage, and is not a deficiency, except where pipe insulation is required.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall make necessary repairs to eliminate leakage.

iii. Possible Deficiency: Faucet or valve leak.

(1) Performance standard: A valve or faucet leak due to material or workmanship is a deficiency and covered only during the first year of the warranty.

(2) Exclusion: Leakage caused by worn or defective washers or seal are a homeowner maintenance item.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace the leaking faucet or valve.

iv. Possible Deficiency: Defective plumbing fixtures, appliances or trim fittings.

(1) Performance standard: Fixtures, appliances or fittings are to be judged according to the manufacturer's standards as to use and operation and are covered only during the first year of the warranty.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall replace or repair any fixture or fitting which is outside of acceptable standards as defined by the manufacturer.

v. Possible Deficiency: Stopped up sanitary sewers, fixtures and sanitary drains are deficiencies.

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(1) Performance standard: Sanitary sewer, fixtures and sanitary drains should operate and drain properly and are covered during the first and second year of the warranty.

(2) Builder/Warrantor responsibility: Where defective construction is shown to be the cause, the builder shall make necessary repairs.

(3) Exclusion: Sewers, fixtures, and drains which are clogged through the owner's negligence, the owner shall assume repair costs.

(4) NOTE: Builder responsibility for defective sewer lines extends to the property line on which the home is constructed.

vi. Possible Deficiency: Chipped or damaged plumbing fixtures and appliances.

(1) Performance standard: Chips, cracks, or other such damage to plumbing fixtures and appliances are deficiencies if they are included in a pre-closing walk through inspection report.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair any chips or cracks if included in the pre-closing inspection report. If repair cannot be made, the fixture or appliance is to be replaced to match the original. If a pre-closing inspection was performed, the Builder/Warrantor shall correct if notified by owner.

(3) The owner shall notify Builder/Warrantor within 30 days of warranty date if no pre-closing walk through inspection was performed.

(4) Exclusion: Where a fixture is built into surrounding wall areas such as a tub or shower basin which requires repair, replacement is not covered under the warranty except where the deficiency causes the fixture to be unuseable.

3. Water supply:

i. Possible Deficiency: Staining of plumbing fixtures due to high iron content in water.

(1) Performance standard: High iron content in the water supply system will cause staining of plumbing fixtures.

(2) Builder/Warrantor responsibility: None. Maintenance and treatment of the water is the homeowner's responsibility.

ii. Possible Deficiency: Drinking water supply is not potable.

(1) Performance standard: All water must be free from contamination that would affect its potability. Potable water is defined as water fit for human consumption. In many cases, well water tests will show contamination that exceeds the recommended amounts permitted under applicable Federal and State standards, however, it still may be considered potable. In order to make this determination, the owner must provide written documentation from an independent testing laboratory or a board of health providing such service stating that the water is unfit for human consumption. Water test reports furnished by a commercial water treatment company cannot be used to make such a determination. Water is considered potable when a certificate of compliance is issued by the local/county board of health. Any recommendation for treatment of the water by the local/county board of health is contractual between owner and builder and cannot be considered a deficiency.

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(2) Exclusion: Water which becomes non-potable after certification by a source beyond the control of the builder shall be excluded from coverage.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall supply potable drinking water.

iii. Possible Deficiency: Water supply system fails to deliver water; or pressure is low.

(1) Performance standard: All service connections to municipal water main or private water supply are the Builder/Warrantor's responsibility when installed by him.

(2) NOTE: Low water pressure is defined as follows: Use of the cold water supply at any one single fixture drastically reduces the cold water supply at any one other single fixture.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall repair as required, if failure to supply water is the result of deficiency in workmanship or materials. If conditions exist which disrupt or eliminate the sources of water supply that are beyond his control, then the builder is not responsible.

iv. Possible Deficiency: Noisy water pipes.

(1) Performance standard: Some noise can be expected from the water pipe system, due to the flow of water. Water hammer in the supply system is a deficiency and is covered only during the first year of the warranty.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall correct to eliminate "water hammer".

(3) Exclusion: Noises due to water flow and pipe expansion are not considered deficiencies.

4. Heating and air conditioning:

i. Possible Deficiency: Inadequate heat.

(1) Performance standard: A heating system shall be capable of producing an inside temperature of 70 degrees Fahrenheit as measured in the center of the room at a height of five feet above the floor, under local outdoor winter design conditions as specified in the latest edition of the New Jersey U.C.C. Energy Subcode and ASHRAE Handbook in effect at the time the home was constructed.

(2) Note for Heating: The outdoor design temperature established by ASHRAE varies geographically throughout the State of New Jersey. There may be periods when the outdoor temperature falls below the design temperature, thereby lowering the temperature in the home. Orientation of the home and location of rooms will also provide a temperature differential, especially when the heating system is controlled by a single thermostat for one or more floor levels.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall correct heating system as required to provide the required temperatures. Balance dampers, registers and make minor adjustments one time only, during the first year of the warranty.

ii. Possible Deficiency: Inadequate cooling.

(1) Performance standard: Where air conditioning is provided, the cooling system is to be capable of maintaining a temperature of 78 degrees Fahrenheit as measured in the center of each

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room at height of five feet above the floor, under local outdoor summer design conditions as specified in the latest edition of the New Jersey U.C.C. Energy Subcode and ASHRAE Handbook in effect at the time the home was constructed.

(2) Note for Air Conditioning: The cooling cycle outdoor design temperature established by ASHRAE provides for a maximum of 12 degree temperature differential between the outdoor and the indoor temperature. There may be periods when the outdoor temperature rises above the design temperature, thereby raising the temperature in the home. Orientation of the home and location of rooms will also provide a temperature differential, especially when the air conditioning system is controlled by a single thermostat for one or more floor levels.

(3) Builder/Warrantor responsibility: Correct cooling system to meet the above temperature requirements during the first year of the warranty.

iii. Possible Deficiency: Ductwork and heating piping not insulated in uninsulated areas.

(1) Performance standard: Ductwork and heating pipes that are run in uninsulated crawlspaces, garages or attics are to be insulated. Basements are not "uninsulated areas", and no insulation is required.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall install required insulation.

iv. Possible Deficiency: Refrigerant lines leak.

(1) Performance standard: Refrigerant lines that develop leaks during normal operation are deficiencies during the first year and second year of the warranty.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair leaking lines and re-charge unit as required.

v. Possible Deficiency: Condensate lines clog-up.

(1) Performance standard: Condensate lines will clog under normal conditions.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall provide clean and unobstructed lines on warranty date.

(3) Owner responsibility: Continued operation of drain line is homeowner maintenance item.

vi. Possible Deficiency: Improper mechanical operation of evaporative cooling system.

(1) Performance standard: Equipment that does not function properly at temperature standard set is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall correct and adjust so that blower and water system operate as designed during the first year of the warranty.

vii. Possible Deficiency: Ductwork noisy.

(1) Performance standard: Noise in ductwork may occur for a brief period when the heating or cooling begins to function and is not considered a deficiency. Continued noise in the ductwork during its normal operation is a deficiency.

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(2) Builder/Warrantor responsibility: The Builder/Warrantor shall take necessary steps to eliminate noise in the ductwork.

viii. Possible Deficiency: Ductwork separates, becomes unattached.

(1) Performance standard: Ductwork that is not in tact or securely fastened is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall reattach and resecure all separated or unattached ductwork.

(f) Rules concerning electrical systems are as follows:

1. Electrical conductors:

i. Possible Deficiency: Failure of wiring to carry its designed circuit load to switches and receptacles.

(1) Performance standard: Wiring that is not capable of carrying the designed load, for normal residential use to switches and receptacles and equipment is a deficiency.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall check wiring and replace wiring if it fails to carry the design load.

2. Switches and receptacles:

i. Possible Deficiency: Fuses blow, or circuit breakers kick out.

(1) Performance standard: Fuses and circuit breakers which deactivate under normal usage, when reset or replaced is a deficiency during the first year of the warranty.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall check wiring and replace wiring or breaker if it does not perform adequately or is defective.

ii. Possible Deficiency: Drafts from electrical outlets.

(1) Performance standard: The electrical junction box on exterior walls may produce a slight air flow whereby the cold air can be drawn through the outlet into a room. This problem is normal in new home construction.

(2) Builder/Warrantor responsibility: None.

iii. Possible Deficiency: Malfunction of electrical outlets, switches or fixtures.

(1) Performance standard: All switches, fixtures and outlets which do not operate as intended are considered deficiencies only during the first year of the warranty.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace defective switches, fixtures and outlets.

3. Service and distribution:

i. Possible Deficiency: Ground fault interruptor trips frequently.

(1) Performance standard: Ground fault interruptors are sensitive safety devices installed into the electrical system to provide protection against electrical shock. These devices are sensitive

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and can be tripped very easily. Ground fault interruptors are required on outlets located in the kitchen, bath and powder rooms along with all exterior outlets. Ground fault outlets which do not operate as intended are considered deficiencies.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall replace the device if defective.

§ 5:25-3.6 Structural and mechanical system standards

The structural and mechanical systems standards to be used in determining the adequacy of design, materials and workmanship for the structural components of the home and for the mechanical systems of the home including plumbing, electrical and heating and cooling systems shall be the provisions of the State Uniform Construction Code in effect on the date that the construction permit under which the new home was constructed was issued. The standards of adequacy for plumbing systems shall be as specified in *N.J.A.C. 5:25-3.5(k)2*; for Heating and Air Conditioning systems shall be specified in *N.J.A.C. 5:25-3.5(k)4* and for the Electrical system capability shall be as specified in *N.J.A.C. 5:25-3.5(l)*.

§ 5:25-3.7 Major structural defects

(a) The load bearing portion of a home is defined as the framing members and structural elements that transmit both dead and live loads of the home to the supporting ground. Examples of load bearing elements are: roof rafters and trusses; ceiling and floor joists; bearing partitions, supporting beams, columns, basement and foundation walls, and footings.

(b) A structural failure shall not be considered a defect until it has been established by the Construction Code Element, under the provisions of the Uniform Construction Code in effect on the date that the Construction Permit under which the new home was constructed was issued, as an actual or pending structural failure of some part of the load bearing system as defined in (a) above. To be eligible, such defect does not have to render the home uninhabitable; however, it must be of such a serious nature that it vitally affects the use of the home for residential purposes and the Construction Official shall issue a notice to that effect under *N.J.A.C. 5:23-2.32* (Unsafe Structures).

(c) The following are excluded as major structural defects:

1. Changes by the owner to the established grade lines affecting basement and foundation walls;
2. Movement caused by flood or earthquake;
3. Actual or resultant damage caused by lightning, tornado, unnatural high winds or hurricanes;
4. Damage caused by additions or alterations to the home;
5. Improper loading over and above the design criteria for which that portion of the house was intended;

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6. Resultant structural damage due to fire;
 7. Changes in the water level which is caused by new development in the immediate area or can be directly traced to an act of nature;
 8. Water seepage in basement or crawlspace after the first year of coverage.
- (d) In the case where a major structural defect exists and the home is rendered uninhabitable, the Builder/Warrantor shall be responsible to pay for reasonable shelter expenses of the Owner until the home is made habitable should the condition occur during the first two years of the warranty. The State Plan or private plan will assume such responsibility during the third through tenth year coverage.

§ 5:25-3.8 Limit on liability

The liability of a builder under the new home warranty shall be limited to the purchase price of the home in the first good faith sale thereof or the fair market value of the home on its completion date if there is no good faith sale. In the event a Certificate of Participation misstates the purchase price or the commencement date and the homeowner fails to notify the New Home Warranty Program within 45 days from the actual warranty commencement date, the limit of liability shall be as stated on the Certificate of Participation at the time of validation.

§ 5:25-3.9 Warranty minimum

It is the intent of this subchapter to specify the scope, applicability and standards pertaining to the minimum warranty required to be given by every builder to every owner. Nothing herein is intended to limit the right of any builder to offer a warranty which exceeds this specified minimum whether by reason of scope, applicability or standards.

HISTORY:

Recodified from 3.8 by R.1986 d.141, effective May 5, 1986.

See: 17 New Jersey Register 2816(a), 18 New Jersey Register 959(a).

§ 5:25-3.10 Remedy exclusive

Pursuant to New Home Warranty and Builders' Registration Act (P.L. 1977, c.467) the filing of a claim against the warranty specified by this subchapter shall constitute the election of a remedy and shall bar the owner from all other remedies. Nothing herein shall be deemed to limit the owner's right to elect other remedies except that such election shall bar the owner from pursuing the same claim under the warranty specified in this subchapter and in accordance with the procedures related hereto. For the purpose of this section, election of other remedies shall mean the fil-

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ing of a complaint, counter-claim, cross-claim or third party complaint in any court that alleges matters covered by the warranty in particular or unworkmanlike construction in general.

§ 5:25-4.1 Private plans permitted

Any person wishing to constitute and establish a private plan to provide for insurance coverage, the payment of claims, dispute settlement, and the like, may apply to the Department for approval as provided for in this subchapter. Participation by a builder in such private plans shall fulfill the builder's obligation to participate in a warranty program pursuant to this chapter.

§ 5:25-4.2 Requirements

(a) In order to receive or maintain an approval a private plan shall conform to all the requirements specified in this section.

(b) The private plan shall provide financial security adequate to cover the total amount of claims that may be reasonably assessed against participating builders and adequate to cover the costs of operation of the plan.

(c) No private plan shall require any payment by an owner at any time subsequent to the warranty date as a condition of maintaining in effect the warranty prescribed by subchapter 3 of this chapter.

(d) A private plan may provide that either the builder or the warranty guarantor are primarily responsible for satisfying claims against the warranty at any given point during the life of the warranty, but such responsibility shall be clearly disclosed to the owner on or before the warranty date and shall not be modified or changed after the warranty term begins to run.

(e) A private plan shall provide a complaint, claims and payment procedure which:

1. Provides for an attempt at informal settlement of any claim arising out of the warranty between the builder and the owner and requires that any owner desiring to make a claim provide written notice of the complaint to the builder.

2. Provides for conciliation and/or arbitration of any warranty claim dispute by an independent third party selected and appointed in a manner approved by the Department and disclosed to the owner on or before the warranty date.

3. Provides the owner with an opportunity to accept or reject a conciliation decision in satisfaction of the claim and notice of the opportunity to appeal that decision to a court of competent jurisdiction.

4. Provides fixed periods of time for action by either party pursuant to the arbitration or conciliation decision.

(f) Private plans shall provide for written notice to the owner concerning warranty coverage and the claims and dispute settlement procedures utilized, expressing in plain language the scope, ap-

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plicability and standards for the warranty and the forms, procedures and processes involved in making a claim under the warranty. The form and content of the written notice shall be approved by the Department.

(g) Private plans shall maintain such loss and payment records as the Department may require and shall provide such reports as the Department may require including, but not limited to the following:

1. Once every 12 months a report showing the number of builders participating, the number of homes covered in each of these categories (first year, second year, third through tenth years), the total number and total amount of claims paid during the reporting period and the total amount of funds available to pay such claims.

2. Once every three months a report showing the names, addresses and builder registration numbers of any new builders admitted to coverage.

3. Within ten days, all private plans shall notify the Department in all cases where a builder's enrollment has been terminated and shall provide sufficient information on the cause of termination as it relates to *N.J.A.C. 5:25-2.5* "Denial, Suspension and Revocation of Registration."

(h) A private plan shall disclose to the Department in writing each occurrence and the circumstances surrounding the decision of the program to refuse to honor a claim awarded by an arbitrator not later than the date upon which an appeal to a court of competent jurisdiction is filed.

(i) Rules concerning notification of non-payment of warranty premium by enrolled builders are:

1. The private plan shall document for the Department in writing all procedures taken to collect warranty premiums from enrolled builders negligent in such payment. Such documentation shall include the following steps:

i. The private plan must notify the enrolled builder immediately upon the discovery of any failure to pay such premium and shall give such builder not more than ten days in which to pay. The private plan shall notify the Department of the failure of any builder to remit such a premium within the ten-day period.

ii. The private plan shall also investigate all homes constructed by the enrolled builder to determine all instances of non-payment of warranty premiums. The private plan shall report its findings to the Department within ten days of the completion of its investigation.

(j) The private plan shall have a warranty guarantor which shall conform to all of the following requirements:

1. The warranty guarantor shall either possess a Certificate of Authority issued by the New Jersey Department of Insurance to write the kind of insurance specified in *N.J.S.A. 17:17-1.1(g)* or be designated by the Department of Insurance as an eligible surplus lines carrier under *N.J.S.A. 17:22-6.45*.

2. The warranty guarantor shall furnish to the Department satisfactory evidence that the form of any insurance policy to be used to provide coverage for the private plan has been approved by the New Jersey Department of Insurance with respect to its compliance with the provisions of State insurance law.

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3. The warranty guarantor shall have and shall maintain an A.M. Best and Company, Inc. rating of "A" or "A+" and shall otherwise be and remain in a financial condition adequate, considering all circumstances including reinsurance arrangements, to cover the risk assumed under the private plan.

4. The terms and conditions of any insurance agreement insuring the private plan shall be subject to approval by the Department as providing the coverage with respect to the warranties required to be provided under said plan. Such terms and conditions shall not be modified or altered without the prior consent of the Department.

5. The warranty guarantor shall agree to provide to the Department such information concerning the settlement of claims and its financial condition as may reasonably be required to demonstrate its initial qualifications to act as a warranty guarantor, the performance of its obligations under the terms of its insurance agreement and its continued satisfaction of the requirements as to financial condition expressed herein.

§ 5:25-4.3 Application approval

(a) Applicants for approval of a private plan shall submit a written application in letter form, the required fee in the amount of \$ 5,000 which is non-refundable and any additional information the Department may require.

(b) Each application for approval shall contain all such information as may be necessary to determine that the plan if approved will conform to the requirements established by N.J.A.C. 5:25-4.2. Such information shall include but not be limited to, the following:

1. Warranty Guarantor:

- i. The name, full street and postal address and telephone number of the warranty guarantor;
- ii. The documents necessary for the qualifications of the warranty guarantor, as required by N.J.A.C. 5:25-4.2(j);
- iii. A copy of the agency agreement between the warranty administrator and the warranty guarantor, if any.

2. Warranty Administrator:

- i. The name, full street and postal address and telephone number of the warranty administrator if different from the warranty guarantor;
- ii. Copy of the Certificate of Incorporation if the warranty administrator is a corporation, copy of the Partnership Agreement if the warranty administrator is a general or limited partnership, other business organization papers if organized under another form;
- iii. The names, addresses and positions of all principals of the corporation, partnership or other type of business entity and the percent of interest held by each.

3. Agents:

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i. The name, full street and postal address of the agents for service of process for the warranty guarantor and warranty administrator who shall be a resident of the State of New Jersey or a corporation licensed to do business in New Jersey.

4. Division of responsibility:

i. Specific information in narrative form on the division of responsibility between the builder and the warranty guarantor for the processing and satisfaction of claims under the warranty security plan, detailing such information as the coverage periods under the warranty for which either the builder or the warranty guarantor is primarily responsible.

5. Rate schedule and charges:

i. The rate schedule of charges by the warranty guarantor showing all rate classes and the manner in which charges are determined, including a justification for any deductible amounts charged to an owner, builder or the warranty administrator;

ii. The rate schedule of charges or fees, if any by the warranty administrator for builder membership in the private plan;

iii. A complete breakdown of proposed plan expenses for the warranty administrator, expressed in percent of the total premium dollars collected, including but not limited to expenses for overhead costs, advertising, dispute settlement services, claims processing, etc.

6. Financial security:

i. A certified, audited financial statement of income and expense for the warranty administrator, showing assets and liabilities for the fiscal year directly preceding the date of the application; and an estimated statement of income and expenses for the current fiscal year; and a certified statement of assets and liabilities as of the date of the application;

ii. A full description of the manner by which financial security is assured and through which sufficient funds to pay all claims which may be reasonably anticipated are available. The Plan's procedures for receipt of premiums and other funds shall be included.

7. Complaint/claims process:

i. A full description of the complaint/claims process proposed for use by the private plan which clearly specifies the respective responsibilities of the warranty administrator and the warranty guarantor, if different entities. The description shall include all time limits established for action by any party;

ii. Specific information of the plan's technical "Quality Standards" and Major Structural Defects Standards, including all exclusions, with full description of how the plan will deal with such exclusions.

8. Copy, samples and submissions:

i. Final copy of samples of the notice of warranty, claims forms and dispute settlement procedures required by N.J.A.C. 5:25-4.2(e). The name and address of the agency or agencies that will provide settlement services for the plan must be included and a full description of the manner in which dispute settlement will be conducted under the plan.

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- ii. Final copy samples of any contractual agreements between member builders and the warranty administrator, including indemnification agreements, member application and all other forms;
- iii. Final copy samples of the homeowners' package, including the warranty, insurance policy and all forms used;
- iv. Copy of the plans' builder information program literature.

9. Federal Trade Commission regulations:

- i. A legal opinion from the plan's attorney regarding the applicability of any regulation administered by the Federal Trade Commission and the Magnuson-Moss Warranty Act.

10. Affidavit of application certification:

- i. Provide an affidavit signed by the responsible partners and notarized certifying that in the event the approval is granted to the Private Plan by the Department of Community Affairs of this filed Application, that the Warranty Guarantor, Warranty Administrator and Agents are fully and completely aware of all the requirements and conditions of the Act and Regulations for the Private Plan and all Amendments thereto; and that they will abide by all requirements and conditions of the Act and Regulations and Amendments thereto; and that they will operate the Plan exactly as stated in their Application without any deviation from the filing.

(c) Each application for approval as a private alternate new home warranty security plan shall be submitted in the following manner:

- 1. Two sets of the required information and documents shall be submitted in separate binders, maximum size to be 8-1/2" by 11", fastened at the top or side in such a manner as to permit the reading of each page without requiring removal, the first page of which shall be a table of contents.

- 2. All information and documents shall be arranged in the order set forth in (b) above.

- 3. Each binder shall note the name and address of the person responsible for preparation of the application on the front cover.

- 4. The right side of the first page of each section shall bear a tab numbered in conformity with the table of contents. Each tab shall be visible without the necessity of lifting any other tab.

- 5. If a section or document is omitted a single sheet of paper, properly tabbed, shall be inserted containing a description of what is omitted and an explanation as to the reason for the omission.

- 6. Any information or document which cannot practicably be included in the binder shall be submitted in a separate folder and a notation of such shall be in the binder.

(d) Each application for approval of a private plan shall be accompanied by a non-refundable application fee in the amount of \$ 5,000.

(e) Upon receipt of a complete application for approval, in proper form, accompanied by payment of the proper fee, the Department shall, within 10 business days, issue a notice of filing indicating the application is complete as to contents and form. This notice shall not be construed as an approval of the application or any portion thereof.

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(f) Within 90 days from the date of the notice of filing or notice of correction as provided in (g) below, the Department shall enter an order approving the application, provided the Department affirmatively determined that the private plan meets the requirements set forth in the Act and these regulations and that there is reasonable assurance that the private plan will act in accordance with the Act and these regulations.

(g) When the Department determines that any of the requirements of the Act or these regulations have not been met it shall notify the applicant of the deficiencies and the applicant shall make the necessary corrections within 30 days.

(h) In the event an order of approval is not issued within 90 days from the date of the notice of filing or notice of correction, no notice of rejection is issued or the applicant has not consented to an extension, the application shall be deemed to have been denied for the purposes of appeal.

(i) In the event the Department finds the application does not meet the requirements of the Act and these regulations it shall issue a notice of rejection which shall include the findings of fact upon which the order is based.

(j) Approval shall be valid for a period of two years from the date of approval. Applications for reapproval shall be filed with the Department not later than 60 days before the expiration of the previous approval. No private plan shall permit approval to lapse so long as any home is covered by the warranty secured by the program. Applications for reapproval shall be accompanied by a \$ 1,000 fee and shall include such information as may then differ from that submitted on the original application for approval. If nothing has changed then the application for renewal of approval shall so certify. The Department shall then review the application for renewal and if required, stipulate any conditions imposed for renewal.

(k) If at any time during the period of approval any material fact stated or described in the application for approval shall change, the applicant shall file an amended application with the Department within 30 days the change takes place. No change, except as may be made outside the control of the applicant, shall be made without prior approval of the Department.

1. Whenever a private plan shall seek to substitute one warranty guarantor or administrator for another, such shall be permissible, provided that the rights and benefits due owners under the plan, shall not be materially affected.

§ 5:25-4.4 Revocation or suspension of approval

(a) If the Department shall establish that any private plan has committed any of the following, its approval may be revoked or suspended:

1. Willfully made a misstatement of a material fact in the application for approval.
2. Established a pattern of unreasonable delay in the processing and disposal of warranty claims.
3. Unreasonably refused to honor a warranty claim or claims.
4. Failed to conform to N.J.A.C. 5:25-4.2(i).

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5. Undertaken to change, changed or become aware of a change in circumstances which induced the Department to approve the plan without having filed an amended application for approval.

6. Violated any of the provisions of section 6 of this subchapter.

7. Deviated in a significant way from the complaint and claims process upon which the approval was based.

§ 5:25-4.5 Denial, suspension or revocation hearing

(a) Whenever the Department shall believe that it has cause to suspend, deny or revoke approval, the following procedure shall apply:

1. Notice: The applicant or previously approved private plan shall be furnished with a written notice describing the reasons for denial or revocation and advising of the right to have a hearing on the matter.

2. Hearing: The hearing shall be conducted in accordance with the provisions of the Administrative Procedure Act (P.L. 1968, c.410, N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1) applicable to contested cases.

3. Decision: The Commissioner shall issue a final decision in accordance with the applicable provisions of the Administrative Procedure Act and the Uniform Administrative Procedure Rules.

§ 5:25-4.6 Responsibilities; prohibitions

A private plan shall provide insurance coverage for all of the new homes constructed by its member builders irrespective of the fact that a member builder has not paid a premium on specific homes, or because of the increase in risk of any particular project or home, due to its size, location, or otherwise.

§ 5:25-5.1 Fund administrator

Responsibility for administering the State plan is hereby delegated to the Director, Division of Codes and Standards. The Director shall establish such procedures and controls as may be necessary to account for the fund and shall approve all payments from the fund.

§ 5:25-5.2 Claim eligibility

(a) The following owners are eligible to file a claim against the State fund:

1. Owners, other than owners of new homes enrolled in a private plan, having a warranty claim which occurs during years three through 10 of the warranty.

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2. Owners having a warranty claim against a builder participating in the State Plan, who has refused to honor or is unable to honor the claim;

3. An owner who has a warranty claim against a builder who, contrary to law, was not a participant in the State Plan;

(b) An owner who elects a remedy other than the filing of a warranty claim with an approved private plan or the State plan shall not be eligible thereafter to file a claim against the State fund. The State fund shall not be liable for any claim not filed in accordance with this chapter.

(c) No person who is not an eligible owner, as determined in accordance with (a) above, shall be entitled to file a claim against the State fund. No builder or other seller of a new home shall be eligible to file a claim against the State fund or to obtain indemnification or other relief from the State fund, whether in a third-party action or otherwise.

§ 5:25-5.3 Builder participation; new home warranty and security fund

Any builder not participating in a private plan shall be required to participate in the State Plan. The State Plan shall cover any new home purchased from a builder except a home enrolled in and warranted under a private plan.

§ 5:25-5.4 Warranty contributions, amount, date due

(a) Each builder not participating in an approved private plan shall contribute to the State plan in an amount equal to a percentage of the purchase price of the home, or of the fair market value of the home on its completion date if there is no good faith arms' length sale, determined in accordance with (b) below, each time such builder sells a home. When the cost of land is not included in the sale, the purchase price shall be deemed to be 125 percent of the contract amount and shall be the basis for calculating the premium and the dollar value placed on the Certificate of Participation.

1. Whenever the seller of a new home is not the builder who constructed it, or a builder taking from the builder who constructed it, such as a mortgagee in possession, receiver in bankruptcy, or executor of an estate, such person shall not be excused from payment of premiums or from taking corrective action on complaints, dispute settlement, or the like in the same manner as would any builder. Such person may contract with a builder for follow-up services that may be required pursuant to the warranty or may, at such person's option, pay 0.68 of one percent of the purchase price of the new home and be relieved of the obligation to provide such follow-up services. The State plan shall then stand in such person's place with regard to any claims made pursuant to this subchapter, but shall not stand in such person's place if the homeowner elects not to file a claim in accordance with this subchapter and elects, rather, to pursue any other remedy against the seller. The claims procedure established by this subchapter shall be the exclusive remedy whereby the State plan shall stand in place of the seller. The Department shall inspect the new home for any defects. The list of defects shall be attached to the Certificate of Participation. Uncompleted por-

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tions shall be excluded from the warranty coverage until completed, in accordance with *N.J.A.C. 5:25-3.4(a)1*. The additional amount paid shall not be passed through to the owner.

2. Where a builder is under contract with a property owner to fully construct a new home and provide the required warranty coverage, and fails to complete the contract and obtain a certificate of occupancy, the owner may apply to the Department for a new home warranty and pay a premium of 0.68 of one percent of the purchase price of the home. Such procedure, and the coverage thereby secured, shall be as defined in *N.J.A.C. 5:25-5.4(a)1*. A warranty shall not be issued when the home is less than 80 percent complete or it is determined by the Department that the cause of the builder's not completing the home was the owners' failing to meet their responsibility under the contract.

3. Each payment shall be forwarded to the Department at least 10 days prior to date of settlement and shall be accompanied by a completed and executed Certificate of Participation on the form prescribed by the Director. The Department shall then validate the Certificate of Participation and return four validated copies to the builder.

4. In such instances where the Department determines that there have been an excessive number of awards against the New Home Warranty Security Fund on the part of an individual builder, due to negligent construction practices, the Department may levy a surcharge against such builder.

(b) The contribution percentage to be paid for each new home by a builder not participating in an approved private plan shall be determined as follows:

1. If, for at least 10 years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.17;

2. If, for at least seven years, but less than 10 years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.213;

3. If, for at least five years, but less than seven years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.255;

4. If, for at least two years, but less than five years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.298;

5. If a builder has not previously been registered, or has been registered for less than two years and there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.319;

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6. If, within the previous two years, there has been any payment made, or any final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.425;

7. If, at any time while the builder's contribution percentage is in an amount determined in accordance with (b)6 above, by reason of the builder's having been responsible for a payment having to be made on a claim under either the State Plan or an approved private plan, there is any further payment made, or any final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of another claim against the builder or a major structural defect, or if a petition in bankruptcy filed by or against a builder and the builder has not yet been discharged or is under the supervision of the court, the contribution percentage shall be 0.595;

8. Whenever a builder is or has been a builder designee, officer, or stockholder or partner with at least a 10 percent ownership interest, of any builder entity, the claim and payment record of that other entity, shall, if less favorable than that of the builder individually, be attributable to the builder for purposes of this subsection.

9. Whenever a builder is a corporation, partnership or subsidiary, the claim and payment record of any builder designee, officer, or stockholder or partner with at least a ten percent ownership interest, or of any corporation, partnership or subsidiary, having any builder designee, officer, or stockholder or partner with at least a 10 percent ownership interest, in common with the builder, shall, if less favorable than that of the builder, be attributable to the builder for purposes of this subsection.

10. If a builder is an individual or group of individuals who is or are the sole owner(s) of another builder that is a corporation, partnership or subsidiary, or if a builder is a corporation, partnership or subsidiary having the same builder designee, officers, and stockholders or partners with at least a ten percent ownership interest, as another builder, the claim and payment record of the one builder shall be attributable to the other for purposes of this subsection.

11. For purposes of this subsection, "10 years" shall mean the 120 month period immediately prior to the date of enrollment of a new home under the State Plan, "seven years" shall mean the 84 month period immediately prior to such date, "five years" shall mean the 60 month period immediately prior to such date, and "two years" shall mean the 24 month period immediately prior to such date; exclusive, in all cases, of any consecutive 12 month period in which no new homes were enrolled in the State Plan or in any approved private plan. Thus, for example, a builder who had no payments or adverse final determinations for 10 years but enrolled no homes during one of those years would not be eligible for the 10 year rate until another year had passed in which he both enrolled at least one new home and had no payments or adverse final determinations.

(c) The establishment of a contribution percentage for a builder that is in excess of the minimum amount shall be in addition to, and not to in lieu of, any punitive action taken pursuant to N.J.A.C. 5:25-2.5 or 2.6 or any surcharge levied pursuant to (a)4 above.

(d) The initial contribution percentage for each builder shall be established as of January 1, 1993 of this subsection. Thereafter, the contribution percentage rate for each builder shall be re-

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viewed by the Division, and revised if necessary, when the builder's registration is renewed. The Department may change the contribution percentage, and make the change effective at a time prior to renewal at any time that a payment is made or there is a final determination that a payment must be made.

(e) There shall be no appeal from the establishment of a contribution percentage except upon the grounds that the record used by the Division for that purpose is either incorrect or incomplete. In any case in which a determination of builder responsibility for a payment was not appealed as required in this chapter or was unsuccessfully appealed, the builder shall not have the right to appeal a contribution percentage determination based on any such prior determination of builder responsibility.

(f) "Claim against the builder" shall include any claim covered by the one-year, two-year, and/or 10-year warranty, as set forth in *N.J.A.C. 5:25-3.2*. No major structural defect that a builder is not obligated to repair shall be charged against a builder for purposes of determining the builder's contribution percentage, if the Department finds that such major structural defect was entirely attributable to a product failure that was not known to the builder at the time of construction and was caused by factors beyond the builder's control.

§ 5:25-5.5 Claims procedure

(a) Builder responsibilities rules are:

1. The builder shall provide to the owner, on or before the warranty date for each new home, a full statement of warranty coverage and warranty claims procedure in such form as shall be prescribed by the Director.

2. Upon receipt of the four validated copies of the Certificate of Participation returned by the Department pursuant to *N.J.A.C. 5:25-5.4(a) 2*, the builder shall distribute said validated copies in the following manner.

- i. On the warranty date, one copy (the owner's settlement copy) shall be furnished to the owner.
- ii. Within 10 days of the warranty date, one copy shall be furnished by the builder to the mortgagee, if any, of the new home.
- iii. One copy shall be furnished to the local construction official as part of the application for a certificate of occupancy.
- iv. One copy shall be retained by the builder as a file copy.

3. The Certificate of Participation shall be in such form and contain such information as shall be prescribed by the Director. A late payment fee shall be assessed and, having been assessed, shall be paid for each failure to remit payments due the Department on time, as provided in *N.J.A.C. 5:25-5.4*. Such late payment fee shall not exceed \$ 50 for the first 30 days, or for any part thereof, and \$ 500 for each 30-day period or part thereof thereafter.

4. The builder shall, on or before the warranty date, provide the owner with written notice concerning the business address to which notifications concerning alleged defects can be directed.

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The builder shall further provide written notice by regular mail of the new address to which notifications may be directed should the business address of the builder change at any time during the first two years following the warranty date.

5. Whenever an owner shall provide a builder with a notice of defect, then the builder shall arrange, with the owner, a mutually agreeable time for an inspection of the defect. Upon completion of the inspection, but in no case later than 30 days from receipt of notice of the defect, the builder shall provide the owner with a written statement setting forth the action the builder will take to correct the defect and the time by which the defect will be corrected.

(b) Owner responsibilities rules are as follows:

1. Except as specifically required in *N.J.A.C. 5:25-3.4*, any owner who believes he or she has a covered defect shall provide written notice of the nature of the defect(s) to the builder not later than seven calendar days after the date on which the warranty on that item expires. The notice shall be delivered to the builder's business address.

2. Upon providing written notice to the builder, the owner shall allow the builder 30 days in which to respond and shall arrange to be present and make the home available to the builder for purposes of inspection of defects, for a reasonable period of time between 9:00 A.M. and 6:00 P.M., Monday through Friday, or other mutually agreeable time.

3. If the matter cannot be resolved through the informal dispute settlement process established in (a)5, (b)1 and 2 above, then the owner may file Notice of Claim and demand, for dispute settlement with the Division. The Notice of Claim shall be filed not later than 14 days after the expiration of the 30 day period provided in (b)2 above. The claim shall state the name of the builder, the date on which the notice of defect was given to the builder, the Certificate of Participation number and a copy of the written notice of the defect, as prescribed in (b)1 above.

i. Except in the case of claims which relate to structural problems or emergencies, a notice of claim shall not be submitted until the expiration of 120 days from the warranty date.

ii. An owner may not file more than one claim for the same defect. However, a new claim may be filed by the owner if new facts arise which could not previously have been known with reasonable diligence.

iii. Where a claimed defect is filed that cannot be observed or determined under normal conditions it is the owner's responsibility to substantiate that the condition does exist. Any cost involved shall be paid by the owner and if properly substantiated, reimbursement shall be made by the builder or the State Plan, whichever is liable for the claim.

4. Where an owner of a new home has not received a valid Certificate of Participation from the builder, pursuant to (a)1 above, then the owner may file both the notice of defect and the notice of claim and demand for conciliation with the Division directly and need not provide notice to the builder. In the event the builder subsequently pays the warranty premium, the Department shall give the builder notice of any pending claims and the status thereof.

(c) Rules concerning Departmental responsibilities and formal claims resolution processes are:

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1. The Division shall, upon receipt of Notice of Claim, designate a conciliator and schedule a conciliation hearing. Whenever possible, such hearing shall take place at the warranted premises. Any resulting agreement shall be in writing, listing the specific actions to be taken by the builder to repair or replace defects in the home and a date by which corrections shall take place.

2. When the defect is corrected or a monetary settlement is made in lieu thereof, the builder shall present the owner with a release for execution. One copy of the signed release shall be retained by the builder, one by the owner, and one copy shall be forwarded to the Division.

3. If all or any part of the dispute remains unresolved after conciliation, the Department shall provide one of the following options:

i. Arbitration:

(1) Where both parties agree, the Division shall designate an arbitrator, who shall hear the matter in accordance with the rules of procedure of the American Arbitration Association. Any person serving as an arbitrator for either the State Plan or an approved private plan shall possess proof of satisfactorily passing the course of study for building inspector R.C.S., as set forth in N.J.A.C. 5:23-5.20(d)1, and examination module 1A-- Building One and Two Family Dwelling or be licensed as a professional engineer or registered or licensed as an architect in any state or hold a license as a subcode official in the State of New Jersey; provided, however, that no person shall serve as an arbitrator in any matter involving a major structural defect claim who is not either a licensed professional engineer or a registered or licensed architect.

(2) The decision of the arbitrator shall be binding on both parties and reviewable only under such circumstances and to such extent as is available pursuant to the New Jersey Arbitration Act. The decision shall fix responsibility, the extent of the defect, and the date by which it must be corrected. In all cases where both parties elect to arbitrate the claims dispute and an arbitration decision has been rendered, there shall be no recourse to subsequent arbitration. In the event the decision of the arbitrator requires clarification, either party or the Division may request the arbitrator's jurisdiction be reinstated for the sole purpose of clarification of the award.

(3) Each party and the Division shall receive one copy of the arbitrator decision.

(4) Whenever arbitration shall result in a finding for the owner, the arbitrator shall prescribe that the builder correct the defect or make necessary replacements.

(5) In lieu of separate conciliation and arbitration, the Division may provide, at its sole option and discretion, for an expedited dispute settlement process wherein conciliation and arbitration are performed simultaneously and any agreement arrived at or decision rendered shall be binding as provided in (c)3i(2) above. Such arbitration shall be subject to the same rules and regulations as defined in (c)3i(3) above.

ii. Administrative hearing:

(1) Where both parties do not agree to arbitration, the Bureau of Homeowner Protection shall thoroughly review the matter and shall make a decision as to the merits of the claim. This decision shall be binding on both parties, provided, however, that if either party files a notice of appeal of the decision with the Division within 15 days of service of notice of such decision the Division shall

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then provide an administrative hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(2) Such hearing shall be held within 30 days of demand by either party, as in (c)3ii(1) above, and a recommended report and decision shall be issued within 45 days of the hearing. Each party shall be permitted 15 days from the date of their receipt of the recommended report and decision to file written exceptions, objections, or argument before the Commissioner, who shall, within 45 days thereafter, issue a final decision which adopts, modifies or rejects the recommended decision. Failure of the Commissioner to issue a decision within 45 days shall constitute affirmation of the recommended decision.

(d) Claim on common elements rules are as follows:

1. Claims including common elements in a condominium or cooperative may only be made by an authorized representative of the association. Where, however, the builder retains control of more than 50 percent voting interest in the association, claim may be made by the owners of unit interest directly to the Bureau or the applicable private plan administrator. The claimed common element defect will then be part of the unit claim and processed according to (c) above.

(e) Final payment in the event of builder default rules are as follows:

1. If any builder, after receiving the decision of the arbitrator, the Bureau of Homeowner Protection or the Director, as the case may be, refuses to correct any defect within the time period specified in the decision, then the owner may file a request for payment with the Department. Notwithstanding any conciliation agreement or arbitration award, the Division shall inspect the home for the purpose of determining if the defect is covered by the warranty and, upon verification that the defect is covered, and upon submission of the bids and review thereof as provided in (e)2 below, the Director shall certify the amount of the award to the Treasurer, who shall make payment from the fund.

2. The amount of the award shall, in all cases, be based upon the lower or lowest of two or more bona fide estimates acceptable to the Division for the work intended to be covered. Payment shall be made jointly to the owner and to the contractor performing the work upon certification by both of them that the work is complete and the defect has been removed; provided, however, that payment may be made to the owner only, upon presentation of proof that the contractor has been paid. An owner electing to perform the work himself or herself shall receive payment in an amount not to exceed the cost of the materials upon certification by him or her of the completion of the work and the removal of the defect. Payment shall be made only for work authorized in writing by the Department and upon completion to the Department's satisfaction.

3. In the event that an owner refuses to accept the amount certified by the Director as being in settlement of all claims against the fund for the defect at issue, the Director shall designate an arbitrator, who shall hear the matter in accordance with the rules of procedure of the American Arbitration Association. In the event that the owner does not agree that the decision of the arbitrator shall be binding, the Director shall provide an opportunity for the owner to appeal the decision of the arbitrator at an administrative hearing pursuant to the Administrative Procedure Act.

i. Any request for an administrative hearing shall be submitted within 15 days of the date of service of the arbitrator's decision.

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ii. The record of the hearing shall be limited to the record of the arbitration proceeding, except to the extent it is determined that the arbitrator incorrectly excluded any evidence that should have been admitted.

iii. The arbitrator shall not be called as a witness by either party.

iv. The standard of review shall be the reasonableness of the arbitrator's decision.

4. When a payment is made under these regulations the owner shall assign to the State all rights, title and interest in any claim or cause of action the owner may have against the builder arising out of the claim for which payment is made. The owner shall execute and deliver any instruments and do whatever else is necessary to secure such rights and shall do nothing to prejudice such right.

(f) Nothing herein shall limit the right of an owner to seek a remedy directly in court pursuant to Section 9 of the Act, without regard to the dispute settlement procedures made available in accordance with this subchapter; provided, however, that the New Home Warranty Security Fund shall have no liability if a remedy other than dispute settlement in accordance with this subchapter is elected by the owner of a new home.

(g) Rules concerning claims which are filed with the State Plan after the expiration of the first two-year warranty period are as follows:

1. All such claims shall be filed with and processed by the Division in accordance with the procedures established under (e)2, 3 and 4 above. All payments made by the Division on such claims shall be from the New Home Warranty Security Fund.

2. Upon receipt of a claim, the Division shall inspect the home for the purpose of determining if the defect is covered by the warranty and, upon verification that the defect is covered, and upon submission of the bids and review thereof as provided in (e)2 above, the Director shall certify the amount of the award to the Treasurer, who shall make payment from the fund.

3. In the event of any dispute regarding a claim filed after the expiration of the first two-year warranty period, the Division shall designate an arbitrator, who shall hear the matter in accordance with the rules of procedure of the American Arbitration Association, except as otherwise provided in these rules; provided, however, that any request for arbitration shall be filed with the Division within 30 days following the date that the disputed decision was received by the party making the request.

i. Except as otherwise permitted by the Division for good cause, the arbitration proceedings shall be either tape recorded or transcribed, with the arbitrator describing for the record any of his or her observations of any alleged defects.

ii. Any person serving as an arbitrator shall be either a licensed professional engineer or a registered or licensed architect.

iii. The claimant may agree in advance that the decision of the arbitrator is to be binding on both parties.

iv. The decision of the arbitrator shall fix responsibility and describe the nature and extent of the defect. The decision shall include a summary of testimony and evidence, a statement of factual

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findings, such technical analysis as may be necessary to support the decision and a statement of the rationale for the decision.

v. In all cases where an arbitration decision has been rendered, there shall be no recourse to subsequent arbitration. In the event the decision of the arbitrator requires clarification, either the claimant or the Division may request the arbitrator's jurisdiction be reinstated for the sole purpose of clarification of the award.

vi. A claimant who does not agree to binding arbitration may subsequently request an administrative hearing to review the decision of the arbitrator on the grounds that evidence was improperly excluded by the arbitrator or that the decision was unreasonable. Any such hearing request shall include the specific factual and/or legal basis for any claim of improper exclusion of evidence or unreasonableness of the decision, as the case may be.

vii. The Division shall, upon a finding by the Director that there exists a contested case, provide an administrative hearing in accordance with the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*, when a party who applied for arbitration but did not agree that it would be binding submits a hearing request including all required information within 15 days of the date of service of the arbitrator's decision. The record of the hearing shall be limited to the record of the arbitration proceeding, except to the extent it is determined that the arbitrator incorrectly excluded any evidence that should have been admitted. The arbitrator may not be called as a witness by either party. The standard of review shall be the reasonableness of the arbitrator's decision.

4. Notwithstanding the provisions of (g)1 above, if the builder was notified of a major structural defect during the first two years of warranty coverage and is currently registered, the Division shall process a claim for remediation of such defect in accordance with subsection (c) above.